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(\*) For these issues, the structure will be reviewed as negotiations progress. These issues may take the form of separate chapters, or may include additional chapters, for instance for subjects such as movement of persons, telecommunications, e-commerce, financial services and cultural cooperation.

(\*\*) Negotiators have agreed to work on the basis of separate chapters on labour and on environment, and a cross-cutting chapter on trade and sustainable development

**Section 1.01**

**Section 1.02**

**Section 1.03**

**Section 1.04**

**Section 1.05**

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**TITLE ON TRADE IN GOODS**

*CHAPTER X*

*NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS*

**ARTICLE 1: OBJECTIVE**

The Parties shall progressively liberalise trade in goods over a transitional period starting from the entry into force of this Agreement in accordance with the provisions of this Agreement.

**ARTICLE 2: SCOPE**

This Chapter applies to trade in goods of either Party, as defined in [], except as otherwise provided in this Agreement.

**[CN: ARTICLE 3: DEFINITIONS**

For purposes of this Chapter [EC: the following definitions apply:]

*Advertising films and recordings:* [means] recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film or recording and that do not form part of a larger consignment; [\*]

*Agricultural good:* [means] A product listed in Annex 1 of the WTO Agreement on Agriculture with any subsequent changes agreed in the WTO to be automatically effective for this Agreement;

*Commercial samples* [means]:

- (a) Any goods that are representative of a particular category of goods produced outside the territory of a Party and that are imported solely for the purpose of being exhibited or demonstrated to solicit orders for similar goods to be supplied outside the territory of that Party; and
- (b) Any films, charts, projectors[EC: ,] [CN: and] scale models [EC:or] [CN: and] similar items, imported solely for the purpose of illustrating a particular

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category of goods produced outside the territory of a Party to solicit orders for similar goods to be supplied from outside the territory of that Party. [\*]

*Commercial samples of negligible value* [means] commercial samples having a value, individually or in the aggregate as shipped, of not more than one USD, or the equivalent amount in the currency of any of the Parties, or so marked, torn, perforated or otherwise treated such that they are unsuitable for sale or for use except as commercial samples; [\*]

*Consumed* [means]:

- (a) actually [CN: consumed] [EC: used]; or
- (b) further processed or manufactured so as to result in a substantial change in value, form or use of the good or in the production of another good; [\*]

*Customs duty* : Any duty or charge of any kind imposed on or in connection with the importation [EC: or exportation] of a good, including any form of surtax or surcharge imposed on or in connection with such importation [EC: or exportation]. [It ] does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article [4 (National Treatment)] of this Agreement;
- (b) duty imposed pursuant to a Party's domestic law consistently with Chapter ... [*Trade Remedies*]
- (c) measure applied consistently with the provisions of Article VI or Article XIX of the GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures, the WTO Agreement on Safeguards, and Article 22 of the Dispute Settlement Understanding.
- (d) fee or other charge imposed consistently with Article VIII of GATT;
- (e) [premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels.]

**NOTE: EC scrutiny reserve.**

*duty-free* [means] Free of customs duties; [\*]

*good imported for sports purposes* [means] A good required for use in sports contests, demonstrations or training in the territory of the Party into whose territory the good is temporarily imported; [\*]

*good intended for display or demonstration* includes the good's component parts, ancillary apparatus and accessories; [\*]

*printed advertising material* [means] A good classified in Chapter 49 of the Harmonized System, including a brochure, pamphlet, leaflet, trade catalogue, yearbook published by a trade association, tourist promotional material or poster, that is:

- (a) used to promote, publicize or advertise a good or service,
- (b) essentially intended to advertise a good or service, and
- (c) supplied free of charge.][\*]

**Note:** EC reserve on all the definitions (marked with \*) associated with Articles on Temporary Admission, Duty-Free entry and Remanufactured Goods

#### ARTICLE 4: NATIONAL TREATMENT

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994[, including its Notes and Supplementary Provisions]. To this end the obligations contained in Article III of the GATT 1994[, including its Notes and Supplementary Provisions,] are incorporated into and made part of this Agreement.

**NOTE:** Reference to Canada's proposal Article X.07 (General Definitions)

[EC: 2. Where products are subject to regulation at the level of the Provinces of Canada ("the Provinces"), the Territories of Canada ("the Territories") or the Member States of the European Union ("the Member States"), "national treatment" shall be understood to mean that products originating in Canada and lawfully placed on the market of any one of the Member States may be placed freely on the market of any other Member State; and products originating in the EU and lawfully placed on the market of any one of the Provinces or Territories may be placed freely on the market of any other Province or Territory.

3. Paragraph 2 is without prejudice to the right of EU and Canada to make mandatory provisions for products that are uniformly applicable throughout their territory.

4. (i) Paragraph 2 is without prejudice to the right of EU and Canada to make mandatory provisions at the level of the Member States, Provinces or Territories necessary for the fulfilment of legitimate objectives such as public security and safety; public order; protection of human, animal or plant life or health; protection of the environment; consumer protection; the effectiveness of fiscal supervision; the fairness of commercial transactions; and the defence of the consumer.

(ii) Such provisions shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction of internal or international trade.

(iii) The right conferred by sub-paragraph (i) shall be exercised under exceptional circumstances only and shall on request by the other Party be justified, in an objective and reasoned manner in writing.

(iv) Except as otherwise provided, "legitimate objectives" do not include protection or favouring of the production of a Party, Member State, Province or Territory."]

[CN: 2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded by that sub-national government to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

3. This Article does not apply to a measure set out in Annex X.4 (Exceptions to Articles 4 and 14). ]

#### **ARTICLE 5: REDUCTION AND ELIMINATION OF CUSTOMS DUTIES ON IMPORTS**

1. Each Party shall reduce or eliminate customs duties on goods originating in either Party in accordance with the Schedules set out in Annexes .. and ... (hereinafter referred to as "the Schedules"). For the purposes of this Chapter, "originating" means originating in either Party under the rules of origin set out in Annex ...

2. For each good, the base rate of customs duties, to which the successive reductions are to be applied under paragraph 1, shall be that specified in the Schedules.

3. Each Party shall apply to originating goods of the other Party the lesser of the customs duties resulting from a comparison between the rate calculated in accordance with that Party's Schedule and its applied Most Favoured Nation (MFN) rate.

4. On the request of either Party, the Parties may consult to consider accelerating and broadening the scope of the elimination of customs duties on imports between the Parties. A decision by the Parties in the [*institutional body*] on the acceleration or elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for that good when approved by each Party in accordance with its applicable legal procedures.

#### **[EC: ARTICLE 6: PROHIBITION OF DRAWBACK OF, OR EXEMPTION FROM, CUSTOMS DUTIES**

1. Non originating materials used in the manufacture of products originating in the European Community or in Canada for which a proof of origin is issued or made out in accordance with the provisions of Title V shall not be subject in the European Community or in Canada to drawback of, or exemption from, customs duties of whatever kind.

2. The prohibition in paragraph 1 shall apply to any arrangement for refund, remission or non-payment, partial or complete, of customs duties or charges having an equivalent effect, applicable in the European Community or in Canada to materials used in the manufacture, where such refund, remission or non-payment applies, expressly or in effect, when products obtained from the said materials are exported and not when they are retained for home use there.

3. The exporter of products covered by a proof of origin shall be prepared to submit at any time, upon request from the customs authorities, all appropriate documents proving that no drawback has been obtained in respect of the non-originating materials used in the

manufacture of the products concerned and that all customs duties or charges having equivalent effect applicable to such materials have actually been paid.

4. The provisions of paragraphs 1 to 3 shall also apply in respect of packaging within the meaning of Article 7(2), accessories, spare parts and tools within the meaning of Article 8, and products in a set within the meaning of Article 9, when such items are non-originating.

5. The provisions of paragraphs 1 to 4 shall apply only in respect of materials which are of the kind to which the Agreement applies.

*NOTE: Canada proposes EC Article 14 from Rules of Origin section should be discussed here. Canada to propose alternate text.*

#### [EC: RTICLE 7: ELIMINATION OF CUSTOMS DUTIES ON EXPORTS

Neither Party may maintain or institute any kind of customs duty on or in connection with the exportation or sale for export of goods to the other Party, or any measures having an equivalent effect.]

#### ARTICLE 8: STANDSTILL

1. Upon the entry into force of this Agreement neither Party may increase any customs duty existing at entry into force, or adopt any new customs duty, on a good originating in the Parties.

2. Notwithstanding this provision, a Party may:

- (a) modify a tariff outside this Agreement on a good for which no tariff preference is claimed under this Agreement;
- (b) increase a customs duty to the level established in its Schedule following a unilateral reduction; or
- (c) maintain or increase a customs duty as authorized by this Agreement or any agreement under the WTO Agreement.

#### [EC: ARTICLE 9: SPECIAL PROVISIONS ON ADMINISTRATIVE CO-OPERATION

1. The Parties agree that administrative co-operation is essential for the implementation and the control of the preferential treatment granted under this [Title] and underline their commitment to combat irregularities and fraud in customs and related matters.

2. Where a Party has made a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud under this [Title], the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.

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3. For the purpose of this Article a failure to provide administrative co-operation shall mean, *inter alia*:

- a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;
- b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
- c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative co-operation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

For the purpose of this Article a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the other Party, that is linked to objective information concerning irregularities or fraud.

4. The application of a temporary suspension shall be subject to the following conditions:

a) The Party which has made a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud shall without undue delay notify the [institutional body] of its finding together with the objective information and enter into consultations within the [institutional body], on the basis of all relevant information and objective findings, with a view to reaching a solution acceptable to both Parties.

b) Where the Parties have entered into consultations within the [institutional body] as above and have failed to agree on an acceptable solution within 3 months following the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. A temporary suspension shall be notified to the [institutional body] without undue delay.

c) Temporary suspensions under this article shall be limited to that necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six months, which may be renewed. Temporary suspensions shall be notified immediately after their adoption to the [institutional body]. They shall be subject to periodic consultations within the [institutional body] in particular with a view to their termination as soon as the conditions for their application are no longer given.

5. At the same time as the notification to the [institutional body] under paragraph 4a) of this Article, the Party concerned should publish a notice to importers in its Official Journal. The notice to importers should indicate for the product concerned that there is a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud.]

## ARTICLE 10: FEES AND OTHER CHARGES

1. In accordance with Article VIII of GATT 1994, no Party may adopt or maintain a fee or charge imposed on or in connection with importation [EC: or exportation] of a good of a Party that is not commensurate with the cost of services rendered or that represents an indirect protection to domestic goods or a taxation of imports for fiscal purposes.



2. Paragraph 1 does not prevent a Party from imposing a customs duty or a charge set out in paragraphs a), b), [c) or e)] of the definition of customs duty in this agreement.

**[CN: ARTICLE 11: TEMPORARY ADMISSION OF GOODS**

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party:
  - (a) professional equipment necessary for carrying out the business activity, trade or profession of a business person qualifying for temporary entry pursuant to Chapter X (Temporary Entry);
  - (b) equipment for the press or for sound or television broadcasting and cinematographic equipment;
  - (c) goods imported for sports purposes and goods intended for display or demonstration; and
  - (d) commercial samples and advertising films and recordings;
2. A Party shall not impose a condition on the duty-free temporary admission of a good referred to in sub-paragraphs 1(a), (b) or (c), other than to require that the good:
  - (a) be imported by a national or resident of the other Party who seeks temporary entry;
  - (b) be used only by or under the personal supervision of that person in the exercise of the business activity, trade, profession or sport of that person;
  - (c) not be sold or leased while in its territory;
  - (d) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation releasable on exportation of the good;
  - (e) be capable of identification when exported;
  - (f) be exported on the departure of that person or within such other period as is reasonably related to the purpose of the temporary importation; and
  - (g) be imported in no greater quantity than is reasonable for its intended use.
3. A Party shall not impose a condition on the duty-free temporary admission of a good referred to in sub-paragraph 1(d), other than to require that the good:
  - (a) be imported solely for soliciting of orders for:
    - i) a good of the other Party or a non-Party, or

- ii) a service provided from the territory of the other Party or a non-Party;
  - (b) not be sold, leased or used for anything other than exhibition or demonstration while in its territory;
  - (c) be capable of identification when exported;
  - (d) be exported within a period that is reasonably related to the purpose of the temporary importation; and
  - (e) be imported in no greater quantity than is reasonable for its intended use.
  - (f) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good.
4. Where a good is temporarily admitted duty-free under paragraph 1 and any condition a Party imposes under paragraph 2 or 3 has not been fulfilled, the Party may impose:
- (a) the customs duty and any other charge that would be owed on entry or final importation of the good; and
  - (b) any applicable criminal, civil or administrative penalties that the circumstances may warrant.
5. Each Party, at the request of the person concerned and for reasons its customs authority considers valid, shall extend the time limit for temporary admission beyond the period initially fixed.
6. Each Party shall adopt procedures providing for the expeditious release of goods admitted under this Article. Each Party shall ensure that, to the extent possible, those procedures provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good is released with the entry of that national or resident.
7. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.
8. Each Party shall provide that its customs authority or other competent authority refund the security to the importer or another person responsible for

9. Except as otherwise provided in this Agreement, a Party shall not:

- (a) prevent a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on a route that is reasonably related to the economic and prompt departure of the container;
- (b) require a security or impose a penalty or charge only because of any difference between the port of entry and the port of departure of a container;
- (c) impose a condition on the release of an obligation, including a security, that it imposes in respect of the entry of a container into its territory on exiting through a particular port of departure; or
- (d) require that the carrier bringing a vehicle or container from the territory of the other Party into its territory be the same carrier taking the container to the territory of the other Party.]

**[CN: ARTICLE 12: DUTY-FREE ENTRY OF CERTAIN COMMERCIAL SAMPLES AND PRINTED ADVERTISING MATERIALS**

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

- (a) such samples be imported solely for the solicitation of orders for:
  - i) a good of the other Party or a non-Party, or
  - ii) a service provided from the territory of the other Party or a non-Party; or
- (b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment. ]

***EU working draft proposal:***

***Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, [CN: regardless of their origin,] imported from the territory of the other Party[EU: ,which may be] subject to conditions defined in their own domestic law.***

**[CN: ARTICLE 13: GOODS RE-ENTERED AFTER REPAIR OR ALTERATION**

1. Except as otherwise provided in Annex X.13, a Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.
2. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.
3. Paragraph 1 does not apply to a good imported in bond, into foreign trade zones, or in similar status, that is exported for repair and is not re-imported in bond, into foreign trade zones, or in similar status.
4. For the purposes of this Article, repair or alteration includes the repair or alteration of parts or pieces of a good, but does not include an operation or process that either:
  - (a) destroys the essential characteristics of a good or creates a new or commercially different good; or
  - (b) transforms an unfinished good into a finished good.]

**NOTE:** *EC considers this unnecessary. Reserve also on where any such provisions should appear.*

*14 July: EU remains unconvinced about the necessity of integrating the article and sees the problem more a domestic Canadian.*

#### **ARTICLE 14: IMPORT AND EXPORT RESTRICTIONS**

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994 [, including its Notes and Supplementary Provisions]. To this end Article XI of the GATT 1994[, its Notes and Supplementary Provisions] are incorporated into and made a part of this Agreement

**NOTE:** *Reference to Canada's proposal Article X.07 (General Definitions).*

[CN: 2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, that Party may:

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(a) limit or prohibit the importation from the territory of the other Party of a good of that non-Party; or

(b) require as a condition of export of a good of the Party to the territory of the other Party that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.]

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of the other Party, shall enter discussions with a view to avoiding undue interference with or distortion of pricing, marketing or distribution arrangements in the other Party.

[CN: 5. This Article does not apply to a measure set out in Annex X.4 (Exceptions to Articles 4 and 14). ]

### [EC: ARTICLE 15: IMPORT LICENSING PROCEDURES

The parties reaffirm their rights and obligations under the WTO Agreement on Import Licensing Procedures.]

*NOTE: Both sides legal reserve.*

### ARTICLE 16: REDUCTION AND ELIMINATION OF NON-TARIFF MEASURES

1. The Parties recognise the importance of reducing and eliminating non-tariff barriers to trade in goods between them.

*NOTE: Pro Memoria. Text to relate to sectoral annexes, if any.*

### [CN: ARTICLE 17: AGRICULTURAL SUBSIDIES

1. The Parties share the objective of the multilateral elimination of agricultural export subsidies and shall work together toward an agreement in the WTO to eliminate those subsidies and avoid their reintroduction in any form.
2. A Party shall not maintain, introduce or reintroduce agricultural export subsidies on an agricultural good originating in or shipped from its territory that is exported directly or indirectly to the territory of the other Party.
3. The Parties recognize that agricultural export subsidies may also have distorting effects in third-party markets.
4. Each Party shall eliminate agricultural export subsidies on agricultural goods originating in or shipped from its territory by December 31, 2013.

5. Pending the elimination of all agricultural export subsidies, if either Party adopts or maintains an agricultural export subsidy which the other Party considers to be distortive of its trade with a non-party, the Party providing the agricultural export subsidy shall, at the request of the other Party, consult with a view to avoiding such distortionary effects.
6. The Parties agree to cooperate in WTO agricultural negotiations in order to achieve a substantial reduction of production and trade distorting domestic support.
7. If either Party maintains a production and trade distorting agriculture domestic support measure which the other Party considers to be distortive of bilateral trade under this Agreement, the Party applying the measure shall, at the request of the other Party, consult with a view to avoiding such distorting effects.]

**[EC: ARTICLE 18: INSTITUTIONAL PROVISIONS]**

*[To be discussed at later stage on the basis of a joint assessment of global needs on institutional bodies]*

**[CN: ARTICLE 18: CONSULTATIONS AND COMMITTEE ON TRADE IN GOODS AND RULES OF ORIGIN]**

1. The Parties establish a Committee on Trade in Goods and Rules of Origin, comprising representatives of each Party and headed by senior officials responsible for international trade matters of each Party.
2. The Committee shall meet on the request of a Party or the Commission to consider any matter arising under this Chapter, Chapter X (Rules of Origin), Chapter X (Customs Procedures), Chapter X (Trade Facilitation), Chapter X (Sanitary and Phytosanitary Measures), or Chapter X (Monopolies and State Enterprises).
3. The Committee's functions shall include:
  - (a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;
  - (b) promptly addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Commission for its consideration;
  - (c) recommending to the Commission any modification of or addition to this Chapter, Chapter X (Rules of Origin), Chapter X (Customs Procedures), Chapter X (Trade Facilitation), Chapter X (Sanitary and Phytosanitary Measures), Chapter X (Monopolies and State Enterprises), or any other provision of this Agreement related to the Harmonized System; and
  - (d) considering any other matter referred to it by a Party relating to the implementation and administration by the Parties of this Chapter, Chapter X (Rules of Origin), Chapter X (Customs Procedures), Chapter X (Trade

Facilitation), Chapter X (Sanitary and Phytosanitary Measures), or Chapter X (Monopolies and State Enterprises).

4. The Parties hereby establish a Sub-Committee on Agriculture that shall:
  - (a) meet within 90 days of a request by a Party;
  - (b) provide a forum for the Parties to consult on issues resulting from the implementation of this Agreement for agricultural goods;
  - (c) refer to the Committee any matter under sub-paragraph (b) on which it has been unable to reach agreement; and
  - (d) report to the Committee for its consideration any agreement reached under this paragraph.
5. On the request of a Party, the Parties shall convene a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties' ports of entry. ]

**[EU: Exclusions**

1. The Parties recognise that, notwithstanding [Article 14 of the Chapter on TiG] they may prohibit or restrict the import or export of products covered by this Agreement in accordance with the relevant provisions of the Agreement. In this regard, they recall that under [Article X.02 of the Chapter on exceptions] they may take restrictive measures on the basis of legitimate policy objectives, provided these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.]

**NOTE: To consider placement**

[CN:

**Annex X.4**

**Exceptions to Articles 4 (National Treatment) and 14 (Import and Export Restrictions)**

**Section I - Canadian Measures**

Articles 4 (National Treatment) and 14 (Import and Export Restrictions) shall not apply to:

- (a) a measure, including that measure's continuation, prompt renewal or amendment, in respect of the following:

- i. the export of logs of all species;

**NOTE: Canada will make a new proposal.**

- ii. the export of unprocessed fish pursuant to applicable provincial legislation;

- iii. the importation of any goods of the prohibited provisions of tariff items 9897.00.00, 9898.00.00 and 9899.00.00 referred to in the Schedule of the *Customs Tariff* (1997, c. 36);

**NOTE: EC takes the view that any prohibitions should be symmetrical in application and challengeable under the CETA. EC will submit a proposal along these lines by round 7.**

- iv. Canadian excise duties on absolute alcohol, as listed under tariff item 2207.10.90 in Canada's Schedule of Concessions annexed to the Marrakesh Protocol (Schedule V), used in manufacturing under the existing provisions of the *Excise Act, 2001, 2002, c.22*, as amended;

**NOTE: Agreed.**

- v. [CN: the use of ships in the coasting trade of Canada; and

- vi. the internal sale and distribution of wine and distilled spirits or

- (b) an action by Canada authorized by the Dispute Settlement Body of the WTO in a dispute between the Parties under the WTO Agreement.]



**Annex X.5**

**Tariff Elimination**

1. As provided in the Parties' Schedules attached to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 5 (2): *[staging categories to be negotiated]*
2. The base rate for determining the interim staged rate of customs duty for an item shall be the most favoured nation customs duty rate applied on June 9, 2009.
3. For the purpose of the elimination of customs duties in accordance with Article 5, interim staged rates shall be rounded down at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest 0.001 of the official monetary unit of the Party.

**Schedule of Canada**

(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)

**Schedule of the European Union**

(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)

**NOTE: Agreed in principle.**

[CN: Annex X.13

**Goods Re-Entered after Repair or Alteration**

For the following goods of HS Chapter 89 that re-enter the territory of Canada from the territory of the European Union, and are registered under the *Canada Shipping Act*, Canada may apply to the value of repair or alteration of such goods, the rate of customs duty for such goods in accordance with its Schedule to Annex X.5 (Tariff Elimination):

- 8901.10.00
- 8901.20.00
- 8901.30.00
- 8901.90.10
- 8901.90.90
- 8902.00.10
- 8904.00.00
- 8905.10.00
- 8905.20.10
- 8905.20.20
- 8905.90.10
- 8905.90.90
- 8906.10.00
- 8906.90.19
- 8906.90.90]

## RULES OF ORIGIN

### [TITLE I

#### GENERAL PROVISIONS

##### *Article 1*

##### **Definitions]**

For the purposes of this [Annex:]

**aquaculture** means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding or protection from predators;

**classified** means the classification of a product under a particular heading or subheading of the Harmonized System;

**customs value** means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on customs valuation);

[CAN: **good** means any merchandise, [product], article or material;]

[CAN: **product** means any merchandise, [good], article or material;]

[EU: "product" means the product being manufactured, even if it is intended for later use in another manufacturing operation;]

[EU: "goods" means both materials and [products];]

**Harmonized System** means the Harmonized Commodity Description and Coding System (HS) including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes;

[CAN: **listed with a Party** means a foreign registered vessel bare-boat chartered to a Canadian citizen or a permanent resident or a Canadian corporation which is listed in the Canadian Register of Ships for the duration of the charter and whose registration in the foreign country is suspended for the duration of the charter;]

**non-originating material** means a material that does not qualify as originating under this [Chapter];

[CAN: **producer** means a person who grows, mines, raises, harvests, fishes, traps, hunts, manufactures, processes, assembles or disassembles a [good];

## LIMITE

[CAN: **production** means growing, mining, raising, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling or disassembling a [good];]

[EU: "manufacture" means any kind of working or processing, including assembly or specific operations;]

[CAN: **sales promotion, marketing and after-sales service costs** means the following costs related to sales promotion, marketing and after-sales service:

- (a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogues, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;
- (b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;
- (c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, and membership and professional fees for sales promotion, marketing and after-sales service personnel;
- (d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of [goods] on the financial statements or cost accounts of the producer;
- (e) product liability insurance;
- (f) office supplies for sales promotion, marketing and after-sales service of [goods], where such costs are identified separately for sales promotion, marketing and after-sales service of [goods] on the financial statements or cost accounts of the producer;
- (g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of [goods] on the financial statements or cost accounts of the producer;
- (h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centres;
- (i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, where such costs are identified separately for sales promotion, marketing and after-sales service of [goods] on the financial statements or cost accounts of the producer; and
- (j) payments by the producer to other persons for warranty repairs;]

[CAN: **Total cost** means all product costs, period costs and other costs incurred in the territory of one or both of the Parties. Product costs means those costs that are associated with the production of a [good] and include the value of materials, direct labour costs, and direct overhead. Period costs means those costs other than product costs that are expensed in the period in which they are incurred, including selling expenses and general and administrative expenses. Other costs means all costs recorded on the books of the producer that are not product costs or period costs.]

[CAN: **transaction value** means the price actually paid or payable for a [good] or material with respect to a transaction of the producer of the [good], adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the WTO Customs Valuation Agreement to include, *inter alia*, such costs as commissions, production assists, royalties or license fees;]

[CAN: **transaction value or ex-works price of the [good]** includes for purposes of this definition sets of Article 12 of this [Chapter] and of [Annex X.1 (Specific Rules of Origin)], and means:

- (a) the transaction value of a [good] when sold by the producer at the place of production; or
- (b) the customs value of that [good];

and adjusted, if necessary, to exclude any costs incurred subsequent to the [good] leaving the place of production, such as freight and insurance;]

*[CA: **transaction value or ex-works price of the [good]** means the transaction value of a [good] when sold by the producer at the place of production or the customs value of that [good], as determined in accordance with the Customs Valuation Agreement. If the transaction value or ex-works price of the [good] includes costs incurred subsequent to the [good] leaving the place of production, such as transportation, loading, unloading, handling or insurance, those costs are excluded from the transaction value or ex-works price of the [good].*

*value of non-originating materials means:*

*(a) the transaction value or the customs value of the material at the time of its importation into a Party, as determined in accordance with the Customs Valuation Agreement. If necessary, the value of a non-originating material is adjusted to include any costs incurred in transporting the material to the place of importation, such as transportation, loading, unloading, handling or insurance; or*

*(b) in the case of a domestic transaction, the value of the material determined in accordance with the principles of the Customs Valuation Agreement in the same manner as an international transaction.]*

[EU: "ex-works price" means the price paid for the product ex-works to the manufacturer in the European Community or in Canada in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the product obtained is exported;]

[CAN: value of non-originating materials means:

- (a) the [transaction value] or the customs value of the materials at the time of their importation into a Party, adjusted, if necessary, to include freight, insurance, packing and all other costs incurred in transporting the materials to the place of importation; or
- (b) in the case of domestic transactions, the value of the materials determined in accordance with the principles of the World Trade Organization's (WTO) Customs Valuation Agreement in the same manner as international transactions, with such modifications as may be required by the circumstances.]

[EU: "value of materials" means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the European Community or in Canada;]

[EU: "consignment" means [products] which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;]

## [TITLE II]

### DEFINITION OF THE CONCEPT OF "ORIGINATING [PRODUCTS]"

#### *Article 2*

#### **General requirements**

1. For the purposes of this Agreement, a [product] is originating [CAN: in a Party] if, [EU: in the territory of a Party,] [CAN: in the territory of one or both of the Parties,] it:
  - a) has been wholly obtained [EU: there] within the meaning of Article 4; or,
  - b) has been produced [EU: there] exclusively from originating materials; or,
  - c) has undergone sufficient [CAN: production] [EU: working or processing] [EU: there] within the meaning of Article 5.
2. The conditions set out in [this Title] relating to the acquisition of originating status must be fulfilled without interruption in the territory of [EU: a Party] [C: one or both of the Parties].

#### *Article 3*

#### [EU : Cumulation of origin] [CAN : Accumulation]

1. [Notwithstanding article 2,] A [product] that originates in a Party shall be considered originating in the other Party when used as a material in the production of a [product] there, [EU: provided that the [working or processing] carried out goes beyond the operations

referred to in Article 7 while it shall not be necessary that the materials of the other Party have undergone sufficient [working or processing].]

1. A [product] that originates in a Party shall be considered originating in the other Party when used as a material in the production of a [product] there. [CAN: If a material that has undergone production in the territory of a Party without obtaining originating status is used in the territory of another Party in the production of an originating [product], the production carried out in the territory of the first Party on that material may be taken into consideration in the territory of the other Party with respect to the originating status of the [product].

2. At the time of completion of an origin declaration for a [product] referred to in paragraph 1, the exporter shall possess all documents provided with respect to the production carried out in the territory of another Party on that material as part of the documents supporting the originating status of the [product].

3. The documents with respect to the production carried out on a non-originating material, referred to in paragraph 2, shall be completed in a legible and permanent form, signed or otherwise endorsed by the producer and describe that material in sufficient detail to be identified.

4. Subject to paragraph 6, where each Party has a trade agreement that, as contemplated by the WTO Agreement, establishes or leads to the establishment of a free trade area with the same non-Party, the territory of that non-Party shall be deemed to form part of the territory of the free trade area established by this Agreement, for purposes of determining whether a good is an originating [good] under this Agreement.

5. A Party shall give effect to paragraph 4 only once provisions with effect equivalent to paragraph 4 are in force between each Party and the non-Party, and upon agreement by the Parties on whether to limit such provisions to specified [goods] or under specified conditions.]

#### *Article 4*

#### **Wholly obtained [products]**

1. The following shall be considered as [EU: wholly obtained in a Party] [CAN: wholly obtained or produced entirely in the territory of one or both of the Parties]:

- (a) mineral [products] and other non-living natural resources extracted or taken from there
- (b) vegetables, plants and plant products harvested or gathered there;
- (c) live animals born and raised there;
- (d)
  - (i) [products] obtained from live animals [EU: raised] there;
  - [EU: (ii) [products] from slaughtered animals born and raised there];

(e) (i) [products] obtained by hunting, trapping, fishing [CAN: or aquaculture] conducted there;

(ii) [products] of aquaculture raised there;

[EU: (f) [products] of sea fishing and other [products] taken from the sea outside any territorial sea by its vessels;]

[EU: (g) [products] made aboard their factory ships exclusively from [products] referred to in (f);]

[CAN: (f) fish, shellfish and other marine life taken from the high seas and the Area as defined in Article 1(1) of the United Nations Convention on the Law of the Sea, by a vessel registered, or listed with a Party, and entitled to fly its flag;]

[CAN: (g) [goods] produced on board a factory ship from the [goods] referred to in subparagraph (f), provided such factory ship is registered, recorded or listed with a Party, and entitled to fly its flag;]

[EU: (h) [products] extracted from marine soil or subsoil outside their territorial waters provided that they have sole rights to work that soil or subsoil;]

[CAN: (h) [goods], other than fish, shellfish and other marine life, taken or extracted from the Area as defined in Article 1(1) of the United Nations Convention on the Law of the Sea, by a vessel registered, recorded or listed with a Party and entitled to fly its flag, or by a Party or a person of a Party, provided that Party or person of a Party has rights to exploit such seabed, subsoil or ocean floor;]

(i) components and raw materials recovered from used [products] collected there, provided the [products] are fit only for such recovery;

(j) waste and scrap resulting from production conducted there;

(k) [goods], at any stage of production, produced there exclusively from [goods] specified in (a) to (j);

[EU: 2. The terms 'their vessels' and 'their factory ships' in paragraph 1(f) and (g) shall apply only to vessels and factory ships:

(a) which are registered in a Member State of the European Union or in Canada;

(b) which sail under the flag of a Member State of the European Union or of Canada;

(c) which meet one of the following conditions:

(i) they are at least 50% owned by nationals of a Member State of the European Union or of Canada;

or

(ii) they are owned by companies



- which have their head office and their main place of business in a Member State of the European Union or of Canada, and
  - which are at least 50% owned by a Member State of the European Union or of Canada, public entities or nationals of those States;
- and
- (d) of which at least 75% of the crew are nationals of a Member State of the European Union or of Canada.]

*Article 5*

[EU: Sufficiently worked or processed [products]] [CAN: Sufficient production]

1. For the purposes of Article 2, [products] which are not wholly obtained are considered to [EU: be sufficiently worked or processed] [CAN: have undergone sufficient production] when the conditions set out in [the list in Appendix II] are fulfilled.

[CAN: 2. Except as provided in [Appendix I] or except for a [product] of Chapter 39 or Chapters 50 through 63 of the Harmonized System, if one or more of the non-originating materials used in the production of a [product] cannot satisfy the requirements set out in [Appendix I] because both the [product] and the non-originating materials are classified under the same subheading, or heading that is not further subdivided into subheadings, the [product] shall be considered to have undergone [sufficient production], provided that:

- (i) the [product] is produced entirely in the territory of one or both of the Parties;
  - (ii) the value of the non-originating materials classified as or with the [product] does not exceed [65 %] of the transaction value or ex-works price of the [product]; and
  - (iii) the [product] satisfies all other applicable requirements of this [Chapter].
3. If a non-originating material undergoes sufficient [EU: working or processing] [CAN: production], the resulting [product] shall be considered as originating and no account shall be taken of the non-originating material contained therein when that [product] is used in the subsequent production of another [product].

*[CAN: Article 6*

**Materials used in Production**

1. If a non-originating material undergoes sufficient [EU: working or processing] [CAN: production], the resulting [product] shall be considered as originating and no account shall be taken of the non-originating material contained therein when that [product] is used in the subsequent production of another [product].

2. For the purpose of determining the origin of a self-produced material, the value of that material is:
  - (a) the total cost incurred in the production of the self-produced material; and
  - (b) an amount for profit and sales promotion, marketing and after-sales service costs equal to that usually reflected in the sale of [goods] of the same class or kind as the self-produced material being valued, if not already included in the total cost determined under subparagraph (a).
3. The amount determined under subparagraph 2(b) for a self-produced material is disregarded if, pursuant to Article X (Net Cost), that material, or a [good] in the production of which that material is used, is the subject of a net cost calculation.
4. For the purpose of paragraphs 2 and 3, a self-produced material means a material that is produced by a producer of a [good] and used in the production of that [good].]

*Article [6]*

**Tolerance**

1. Notwithstanding Article 5(1), [CAN: and except as provided in paragraphs 2 through 4], a [good] shall be considered to be an originating [good] if the value of all non-originating materials used in the production of the [good] do not fulfil the conditions set out in [Annex X.1] provided that:
  - (a) their total value does not exceed 10 per cent of the [ex-works price/transaction value] of the [product]; and,
  - (b) any of the percentages given in [the list] for the maximum value [EU: or weight] of non-originating materials are not exceeded through the application of this paragraph; and
  - (c) the [good] satisfies all other applicable requirements of this [Chapter.]

[EU: This paragraph shall not apply to [products] falling within Chapters 50 to 63 of the Harmonized System.]

[EU: Paragraphs 1 and 2 shall apply subject to the provisions of Article 7.]
2. [CAN: Except as provided in Annex X.1 (Specific Rules of Origin), paragraph 1 does not apply to a non-originating material used in the production of a [good] of Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading from the [good] for which origin is being determined under this Article.
3. A [good] of any of Chapters 50 through 60, headings 63.01 through 63.05, subheading 6307.10 or 6307.90, heading 63.08 or a new rag of heading 63.10 of the Harmonized System, that does not originate because certain non-originating yarns or fabrics used in the production of the [good] do not fulfil the requirements set out in [Annex X-

1(Specific Rules of Origin)] shall nonetheless be considered to be originating if the total weight of all such yarns or fabrics does not exceed 10 per cent of the total weight of that [good].

4. For purposes of a [good] of Chapters 61 through 62, heading 63.06 or subheading 6307.20 of the Harmonized System, the Chapter Note of Chapter 61, 62 or 63 of [Annex X-1(Specific Rules of Origin)], whichever is applicable, shall apply.]

*[EU: Article [7]*

#### **Insufficient production**

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient [working or processing] to confer the status of originating [products], whether or not the requirements of Article 5 are satisfied:

- (a) preserving operations to ensure that the [products] remain in good condition during transport and storage;
- (b) breaking-up and assembly of packages;
- (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles;
- (e) simple painting and polishing operations;
- (f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;
- (h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on [products] or their packaging;
- (m) simple mixing of [products], whether or not of different kinds; mixing of sugar with any material;
- (n) simple assembly of parts of articles to constitute a complete article or disassembly of [products] into parts;

(o) a combination of two or more operations specified in (a) to (n);

(p) slaughter of animals.

2. All operations carried out either in the European Union or in Canada on a given [product] shall be considered together when determining whether the [working or processing] undergone by that [product] is to be regarded as insufficient within the meaning of paragraph 1.

3. For the purposes of paragraph 1, operations are to be considered simple when neither special skills nor machines, apparatus or tools especially produced or installed for those operations are required for their performance.]

#### *Article [8]*

##### **Unit of Classification**

For purposes of this [Annex]:

(a) the tariff classification of a particular [product] or material shall be determined according to the Harmonized System;

(b) where a [product] composed of a group or assembly of articles or components is classified pursuant to the terms of the Harmonized System under a single heading or subheading, the whole shall constitute the particular [product]; and

(c) where a shipment consists of a number of identical [products] classified under the same heading or subheading of the Harmonized System, each [product] shall be considered separately.

#### *Article [9]*

##### **Packaging and packing materials and containers**

[CAN: 1. Except as provided for in Article 12 of this [Chapter] and in [Annex X.1 (Specific Rules of Origin)], packaging materials and containers in which a [product] is packaged for sale shall be disregarded in determining whether all the non-originating materials used in the production of the [good] satisfy the requirements set out in [Annex X.1 (Specific Rules of Origin)].

[EU: 1. Where, under General Rule 5 of the Harmonized System, packaging is included with the [product] for classification purposes, it shall be included for the purposes of determining origin.]

2. Packing materials and containers in which a [product] is packed for shipment shall be disregarded in determining the origin of that [product].

#### *Article [9]*

**Packaging and packing materials and containers**

1. Except as provided for in Article 12 (Sets) and in [Annex X.1 (Specific Rules of Origin)], if specially shaped or fitted containers covered by General Rule 5(a) of the Harmonized System or packaging materials and containers in which a [product] is packaged for sale are included with the [product] for classification purposes, they are:
  - (a) disregarded in determining whether all the non-originating materials used in the production of the [product] undergo the applicable change in tariff classification or other requirements set out in Annex X.1 (Specific Rules of Origin); and
  - (b) included in determining whether the value of the non-originating materials does not exceed a maximum value of the transaction value [or ex-works price] of the [product] if the rule of origin of Annex X.1 (Specific Rules of Origin) applicable to the [product] contains a value test, and those specially shaped or fitted containers or packaging materials and containers are non-originating and, if invoiced separately from the [product], would be classified in the same heading or subheading as that on which the value test is focused.
2. Packing materials and containers in which a [product] is packed for shipment are disregarded in determining the origin of that [product].

*Article [10]*

**Accounting segregation of fungible materials [CAN: or products]**

1. If originating and non-originating fungible materials are used in the [EU: working or processing] [CAN: production] of a [product], [CAN: or if originating and non-originating fungible [products] are physically combined or mixed in inventory in a Party and exported in the same form to the other Party,] the determination of [CAN: the origin of] the [CAN: fungible] materials [CAN: or of the fungible [products]] need not be made through physical separation and identification of any specific fungible material [CAN: or [product]], but may be determined on the basis of an inventory management system.
2. For the purposes of paragraph 1, fungible materials [CAN: or fungible products] means materials [CAN: or products] that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another
3. The inventory management system must ensure that no more [CAN: products] receive originating status than would have been the case if the fungible materials [CAN: or fungible products] had been physically segregated.
4. [EU: A Party may require that the application of an inventory management system pursuant to this Article is subject to prior authorisation. The authorisation to use accounting segregation may be withdrawn if the producer makes improper use of it.]

*Article [10]*

**Accounting segregation of fungible materials [CAN: or products]**

1. If originating and non-originating fungible materials are used in the [EU: working or processing] [CAN: production] of a [product], [CAN: or if originating and non-originating fungible [products] are physically combined or mixed in inventory in a Party and exported in the same form to the other Party,] the determination of [CAN: the origin of] the [CAN: fungible] materials [CAN: or of the fungible [products] need not be made through physical separation and identification of any specific fungible material [CAN: or [product]], but may be determined on the basis of an inventory management system.
2. The inventory management system must ensure that no more [CAN: products] receive originating status than would have been the case if the fungible materials [CAN: or fungible products] had been physically segregated.
3. [EU: A Party may require that the application of an inventory management system pursuant to this Article is subject to prior authorisation. The authorisation to use accounting segregation may be withdrawn if the producer makes improper use of it.]
4. For the purposes of paragraphs 1 and 2:
  - (a) **fungible materials** means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes; and
  - [CAN: (b) **fungible products** means [products] that are of the same kind and commercial quality, with the same technical and physical characteristics, and which, when commingled, cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination.]

*Article [11]*

**Accessories, spare parts and tools**

Accessories, spare parts and tools delivered with a [product] that form part of its standard accessories, spare parts or tools, that are not invoiced separately from the [product] and which quantities and value are customary for the [product], shall be:

- a) taken into account in calculating the value of the relevant non-originating materials when the rule of origin of [Appendix I] applicable to the [product] contains a percentage for the maximum value of non-originating materials; and
- b) disregarded in determining whether all the non-originating materials used in the production of the [product] undergo the applicable change in tariff classification or other requirements set out in [Annex X.1 (Specific Rules of Origin)].

*Article [12]*

**Sets**

1. Except as provided in [Annex X.1 (Specific Rules of Origin)], a set, as referred to in General Rule 3 of the Harmonized System shall be considered originating, provided that:

(a) all the component [goods] are originating; or

(b) where the set contains non-originating component [products]

(i) at least one of the component [products], or all the packaging materials and containers for the set, is originating; and

(ii) the value of the non-originating component [products], does not exceed [15][50] per cent of [the transaction value or] ex-works price of the set.]

2. The value of non-originating component [goods] shall be calculated in the same manner as the value of non-originating materials.

3. The transaction value or ex-works price of the set shall be calculated in the same manner as the transaction value or ex-works price of the [good].

*Article [13]*

**Neutral Elements**

In order to determine whether a [product] originates, it shall not be necessary to determine the origin of the following which might be used in its [manufacture] [production]:

(a) energy and fuel;

(b) plant and equipment;

(c) machines and tools;

(d) materials which do not enter and which are not intended to enter into the final composition of the [product].

*Article [14]*

**Transport through a Non-Party**

1. A [good] shall not be considered to be originating by reason of having undergone production that satisfies the requirements of Article 2 if, subsequent to that production, the [good]:
  - (a) undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, [C: storage] or any other operation necessary to preserve it in [good] condition, [CAN: or any other operation] to transport the [good] to the territory of a Party; or
  - (b) does not remain under customs control while outside the territories of the Parties.

[EU: Storage of [products] or consignments and splitting of consignments may take place where carried out under the responsibility of the exporter or of a subsequent holder of the [goods] and the [products] remain under customs supervision in the country(ies) of transit.]

2. An originating [good] may be transported by pipeline outside the territories of the Parties.

*Article [15]*

**[CAN: Consultation and Modifications]**

1. The Parties shall consult regularly to ensure that this [Chapter] is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this [Chapter].
2. A Party that considers that this [Chapter] requires modification to take into account developments in production processes or other matters may submit a proposed modification along with supporting rationale and any studies to the other Party for consideration and any appropriate action under [Chapter X (National Treatment and Market Access for [goods])].

*Article 16*

**Returned Originating Goods**

2. If originating [goods] exported from a Party to a non-Party return, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that the returning [goods]:
  - (a) are the same as those exported;  
and
  - (b) have not undergone any operation beyond that necessary to preserve them in good condition.



*[CAN: Article X*

**Net Cost**

1. For purposes of a [good] of heading 87.01 through 87.08, at the choice of an exporter or a producer of such [good], the value test shall be satisfied provided the value of non-originating materials used in the production of the [good] does not exceed a given percentage of either the transaction value or ex-works price of the [good], or the net cost of the [good].
2. For the purpose of calculating the net cost of a [good] under paragraph 1, the producer of the [good] may:
  - (a) calculate the total cost incurred with respect to all [goods] produced by that producer, subtract any sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs, as well as a non-allowable interest cost that is included in the total cost of all those [goods], and then reasonably allocate the resulting net cost of those [goods] to the [good];
  - (b) calculate the total cost incurred with respect to all [goods] produced by that producer, reasonably allocate the total cost to the [good], and then subtract any sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs and non-allowable interest cost that is included in the portion of the total cost allocated to the [good]; or
  - (c) reasonably allocate each cost that forms part of the total cost incurred with respect to the [good] so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs, or non-allowable interest cost.
3. For the purpose of calculating the net cost of a [good] under paragraph 1, the producer may average its calculation over its fiscal year using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:
  - (a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;
  - (b) the same model line of motor vehicles produced in the same plant in the territory of a Party;
  - (c) the same model line of motor vehicles produced in the territory of a Party;
  - (d) the same class of motor vehicles produced in the same plant in the territory of a Party; or
  - (e) any other category as the Parties may agree.
4. For the purpose of calculating the net cost under paragraph 1 with respect to a [good] of headings 87.06 through 87.08 produced in the same plant, the producer may:

- (a) average its calculation,
  - i) over the fiscal year of the motor vehicle producer to whom the [good] is sold,
  - ii) over any quarter or month, provided the [good] was produced during the quarter or month forming the basis for the calculation; or
  - iii) over the automotive materials producer's fiscal year,
- (b) calculate the average referred to in subparagraph (a) separately for any or all [goods] sold to one or more motor vehicle producers; or
- (c) calculate the average in subparagraph (a) or (b) separately for those [goods] that are exported to the territory of the other Party.

5. For the purpose of this Article, the following definitions apply, in addition to those set out in Article 1:

- (a) net cost means total cost minus sales promotion, marketing and after-sales service costs, royalty, shipping and packing costs, and non-allowable interest cost that are included in the total cost;
- (b) non-allowable interest cost means interest costs incurred by a producer that exceed 700 basis points above the applicable national government interest rate identified for comparable maturities;
- (c) royalty means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:
  - i) personnel training, without regard to where performed; and
  - ii) if performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services, or other services;
- (d) shipping and packing costs means the costs incurred in packing a [good] for shipment and shipping the [good] from the point of direct shipment to the buyer, excluding costs of preparing and packaging the [good] for retail sale.]

TITLE V

ORIGIN PROCEDURES

ARTICLE 15: PROOF OF ORIGIN

1. Products originating in the EU Party shall, on importation into Canada and products originating in Canada shall, on importation into the EU Party benefit from preferential tariff treatment of this Agreement on the basis of a declaration, subsequently referred to as the "origin declaration".
2. The origin declaration is provided on an invoice or any other commercial document that describes the originating product in sufficient detail to enable its identification.
3. The Parties agree to periodically review Article 16, paragraph 1(a) to further liberalize or simplify the process and may, if necessary, amend the origin declaration by agreement.
4. The different linguistic versions of the text of the origin declaration appear in Annex [...]

ARTICLE 16: OBLIGATIONS REGARDING EXPORTATIONS

1. An origin declaration as referred to in Article 15 may be completed:

(a) in the EU:

- (i) by an exporter within the meaning of Article 17, or
- (ii) by any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed EUR 6 000.

(b) in Canada, by an exporter who exports goods as per Part V of the *Customs Act*.

2. The exporter completing an origin declaration shall at the request of the customs authority of the Party of export submit a copy of the origin declaration and all appropriate documents proving the originating status of the products concerned, including supporting documents or written statements from the producers or suppliers, as well as the fulfilment of the other requirements of this Annex.
3. Origin declarations shall be completed and signed by the exporter unless otherwise provided. However, an approved exporter within the meaning of Article 17 shall not be required to sign such declarations provided that he gives the customs authority of the Party of export a written undertaking that he accepts full responsibility for any origin declaration which identifies him as if it had been signed by him.

4. An origin declaration may be completed by the exporter when the products to which it relates are exported, or after exportation on condition that it is presented in the importing Party within a period of two years or for such longer period as specified in the legislation of the importing Party after the importation of the products to which it relates.

5. The customs authority of the Party of import may allow an origin declaration to apply to multiple shipments of identical originating products that take place within a period not exceeding 12 months as specified by the exporter in that declaration.

6. An exporter who has completed an origin declaration that becomes aware or has reason to believe that the origin declaration contains incorrect information, shall immediately notify the importer in writing of any change affecting the originating status of each product to which the origin declaration applies.

7. The Parties may allow the establishment of a system that would permit, for situations in which an origin declaration is submitted electronically and directly from the exporter in the territory of one Party to an importer in the territory of another Party, including the replacement of the exporter's original signature on the origin declaration with an electronic signature or identification code.

**[Article 17: Approved Exporter]**

1. For the purposes of Article 16, paragraph 1(a)(i), the customs authorities of the Party of export shall authorise any exporter who exports products under this Agreement to apply for approved exporter status for the purposes of completing an origin declaration.
2. Approved exporter status [EU: may][CAN: shall] be granted, irrespective of trade flows, the value or the frequency of exports or the business duration, provided the exporter is able to:
  - (a) substantiate the originating status of the product being exported;
  - (b) demonstrate compliance with its Party's laws and regulations;
  - (c) maintain records or documentation in accordance with its Party's laws and regulations; and
  - (d) demonstrate compliance with the provisions of this annex.
3. The customs authorities shall grant to the approved exporter a customs authorisation number which shall appear on the origin declaration.
4. The customs authorities shall monitor the use of the authorisation by the approved exporter.
5. Approved exporter status may [CAN: only] be withdrawn if the exporter does not fulfill the conditions identified in paragraph 2 or the exporter misuses or abuses the authorization.

6. Under paragraph 5, where approved exporter status has been withdrawn, the customs authority of the Party of export may withhold approved exporter status until that person establishes compliance with the conditions set out in paragraph 2.

**ARTICLE 18: VALIDITY OF THE ORIGIN DECLARATION**

1. An origin declaration shall be valid for 12 months from the date when it was completed by the exporter, or for such longer period as determined by the Party of import. The preferential tariff treatment may be claimed within the validity period to the customs authority of the Party of import.
2. Origin declarations which are submitted to the customs authority of the Party of import after the validity period specified in paragraph 1 may be accepted for the purpose of preferential tariff treatment in accordance with the respective laws and regulations of the importing Party.

**ARTICLE 19: OBLIGATIONS REGARDING IMPORTATIONS**

1. For the purpose of claiming preferential tariff treatment, the importer shall:
  - a) submit the origin declaration to the customs authority of the Party of import as required by and in accordance with the procedures applicable in that Party;
  - b) if required by the customs authority of the Party of import, submit a translation of the origin declaration; and
  - c) if required by the customs authority of the Party of import provide for a statement accompanying or as part of the import declaration to the effect that the products meet the conditions required for the application of this Agreement.
2. An importer that becomes aware or has reason to believe that an origin declaration for a product to which preferential tariff treatment has been granted contains incorrect information shall immediately notify the customs authority of the Party of import in writing of any change affecting the originating status of that product and pay any duties owing.
3. When an importer claims preferential tariff treatment for a good imported into the territory from the territory of the other Party the importing Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Annex.
4. A Party shall, in accordance with its domestic legislation, provide that, where a product would have qualified as an originating product when it was imported into the territory of that Party except that the importer did not have an origin declaration at the time of importation, the importer of the product may within a period of no less than three years after the date of importation apply for a refund of duties paid as a result of the product not having been accorded preferential tariff treatment.

**ARTICLE 20: PROOF RELATED TO TRANSPORT THROUGH A NON-PARTY**

1. Each Party, through its customs authority, may require an importer to demonstrate that a good for which the importer claims preferential tariff treatment was shipped in accordance with Article XX (Rules of Origin – Transport Through a Non-Party) by providing:

a) carrier documents, including bills of lading or waybills, indicating the shipping route and all points of shipment and transshipment prior to the importation of the good; and

b) where the good is shipped through or transhipped outside the territories of the Parties, a copy of the customs control documents indicating to that customs authority that the good remained under customs control while outside the territories of the Parties.

#### **ARTICLE 21: IMPORTATION BY INSTALMENTS**

Where, at the request of the importer and on the conditions laid down by the customs authority of the Party of import, dismantled or non-assembled products within the meaning of General Rule 2(a) of the HS falling within Sections XVI and XVII or headings 7308 and 9406 of the HS are imported by instalments, a single origin declaration for such products shall be submitted, as required, to that customs authority upon importation of the first instalment.

#### **ARTICLE 22: EXEMPTIONS FROM ORIGIN DECLARATIONS**

1. A Party may, in accordance with its domestic legislation, waive the requirement to present an origin declaration as referred to in Article 19, Obligations Regarding Importations, for low value shipments of originating products from another Party and for originating products forming part of the personal luggage of a traveller coming from another Party.

2. A Party may exclude any importation from the provisions of paragraph 1 when the importation is part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirements of this Annex related to origin declarations.

3. The Parties may set value limits for products referred to in paragraph 1, and will exchange information regarding those limits.

#### **ARTICLE 23: SUPPORTING DOCUMENTS**

The documents referred to in Article 16, Obligations Regarding Exportations, used for the purpose of proving that products covered by origin declarations can be considered as products originating in the EU Party or in Canada and fulfil the other requirements of this Protocol may include documents relating to the following:

- (a) the production processes carried out on the originating product or on materials used in the production of that product;
- (b) the purchase of, the cost of, the value of and the payment for the product;
- (c) the origin of, the purchase of, the cost of, the value of and the payment for all materials, including neutral elements, used in the production of the product; and
- (d) the shipment of the product.

#### ARTICLE 24: PRESERVATION OF RECORDS

1. The exporter that has completed an origin declaration shall keep a copy of the origin declaration, as well as the documents referred to in Article 23 supporting the originating status of the products, for three years after the completion of the origin declaration or for such longer period as a Party may specify.
2. Where an exporter has based an origin declaration on a written statement from the producer, the producer shall be required to maintain records in accordance with paragraph 1.
3. When provided for in domestic legislation of the Party of import, an importer that has been granted preferential tariff treatment shall keep documentation relating to the importation of the good, including a copy of the origin declaration, for three years after the date on which preferential treatment was granted, or for such longer period as that Party may specify.
4. Each Party shall permit, in accordance with that Party's laws and regulations, importers, exporters, and producers in its territory to maintain documentation or records in any medium, provided that the documentation or records can be retrieved and printed.
5. A Party may deny preferential tariff treatment to a good that is the subject of an origin verification where the importer, exporter, or producer of the good that is required to maintain records or documentation under this Article:
  - (a) fails to maintain records or documentation relevant to determining the origin of the good in accordance with the requirements of the Annex; or
  - (b) denies access to such records or documentation.

#### ARTICLE 25: DISCREPANCIES AND FORMAL ERRORS

1. The discovery of slight discrepancies between the statements made in the origin declaration and those made in the documents submitted to the customs authorities for the purpose of carrying out the formalities for importing the products shall not *ipso facto* render the origin declaration null and void if it is duly established that such document does correspond to the products submitted.
2. Obvious formal errors such as typing errors on an origin declaration should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

### TITLE VI

#### ARRANGEMENTS FOR ADMINISTRATIVE CO-OPERATION

#### ARTICLE 26: CO-OPERATION

- 1) The Parties shall co-operate in the uniform administration and interpretation of the provisions of this Annex and, through their customs authorities, assist each other in verifying the originating status of the products on which an origin declaration is based.
- 2) In order to facilitate the verifications referred to in paragraph 1, the customs authorities of the Parties shall provide each other, through the Commission of the European Communities, with addresses of the customs authorities responsible for verifying proofs of origin.

3) It is understood that the customs authority of the Party of export will, in conducting an origin verification at the request of the customs authority of the Party of import, assume all expenses associated with conducting [EU: its] [CAN: the] origin verification [CAN: within its territory, except for travel and incidental expenses incurred by the customs authority of the Party of import.]

4. It is further understood that the customs authorities of the Parties will discuss the overall operation and administration of the verification process, including forecasting of workload and discussing priorities. Where there is an unusual increase in the number of verification requests, the customs authorities of the Parties concerned will consult to establish priorities and consider steps to manage the workload, with consideration of operational requirements.

5. With respect to goods considered originating in accordance with Article X.X (Rules of Origin - Accumulation), the Parties may cooperate with a non-Party to develop customs procedures based on the principles of this Annex.

#### ARTICLE 27: ORIGIN VERIFICATION

1. In order to ensure the proper application of this Annex, the Parties shall assist each other, through the customs authorities, in verifying whether products are originating and ensuring the accuracy of claims for preferential tariff treatment.

2. Requests for origin verifications shall be made based on risk assessment methods which may include random selection or whenever the customs authority of the Party of import has reasonable doubts as to whether the product is originating and all other requirements of this Annex have been fulfilled.

3. A customs authority of the Party of import may verify whether a product is originating by:

- (a) requesting in writing that the customs authority of the Party of export conduct a verification as to whether a product is originating; and
- (b) providing the customs authority of the Party of export with:
  - (i) the subject and scope of the verification and any supporting documentation relevant to the request; and
  - (ii) where appropriate, a request to provide specific documentation or information relating to the request.

4. A request made by the customs authority of the Party of import pursuant to paragraph 3 shall be provided to the customs authority of the Party of export by certified or registered mail or any other method that produces a confirmation of receipt by that customs authority.



5. The origin verification shall be carried out by the customs authority of the Party of export. For this purpose, the customs authority may in accordance with its domestic legislation, request documentation, call for any evidence or visit the premises of an exporter or a producer to review the records referred to in Article 23 and observe the facilities used in the production of the good.

6. Where an exporter has based an origin declaration on a written statement from the producer, the exporter may arrange for the producer to provide documentation or information directly to the customs authority of the Party of export.

7. As soon as possible and in any event within 12 months after receiving the request referred to in paragraph 3, the customs authority of the Party of export shall complete a verification of whether the product is originating and fulfils the other requirements of this Annex, and shall:

- a) provide to the customs authority of the Party of import:
  - i) a written report as to the results of the verification including the facts and findings and sufficient information for the Party of import to reach a decision; and
  - ii) the relevant information or documentation requested under paragraph 3; and
- b) subject to its domestic legislation, notify the exporter of its decision as to whether the product is originating.

8. The period referred to in paragraph 7 may be extended by agreement between the customs authorities concerned.

9. Pending the results of an origin verification under paragraph 5, the customs authority of the Party of import may suspend the granting of preferential treatment to the product concerned and shall offer to release the product to the importer, subject to any precautionary measures deemed necessary.

10. The customs authority of the Party of import shall, subject to its domestic legislation, make a decision as to whether the product is originating and notify the importer of its origin decision.

11. Where the result of an origin verification has not been provided in accordance with paragraph 7, or where the customs authority of the Party of import is unable to arrive at a conclusion as to whether a product is originating, that customs authority may deny preferential tariff treatment to the product.

12. Where differences in relation to the verification procedures of this Article or in the interpretation of the rules of origin in determining whether a product qualifies as originating, cannot be resolved between the customs authority requesting the verification and the customs

authority responsible for performing the verification, a Party may seek to resolve those differences within the [Customs Committee] established under this Agreement.

13. In all cases the settlement of differences between the importer and the customs authority of the Party of import shall be under the legislation of the said Party.

14. Nothing in this Annex prevents a Party from issuing a determination of origin or an advance ruling relating to any matter under consideration by the Customs Procedures Sub-Committee or the Committee on Trade in Goods and Rules of Origin or from taking such other action that it considers necessary, pending a resolution of the matter under this Agreement.

**[C: Article 28: Participation of observers in origin verification]**

1. Subject to Article \_\_\_ and any conditions set out by the customs authority of the Party of export, the customs authority of the Party of import may be present as an observer during the course of an origin verification conducted by the customs authority of the Party of export.

2. An observer, being a member of a domestic verification team in the territory of the Party of export, shall act through that team and may not on the observer's own initiative look for documents or question the exporter directly.

3. An observer participating in a domestic verification team in the territory of another Party may not wear a uniform or carry weapons.

4. Only a customs officer representing the customs authority of the Party of import shall be permitted to participate as an observer.]

**ARTICLE 29: REVIEW AND APPEAL**

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings issued by its customs authority as it provides to importers in its territory, to any person who:

(a) has received an origin decision in application of the provisions of this annex ; or

(b) has received an advance ruling pursuant to Article X.9.1.

2. Further to Articles X.3 (Transparency - Administrative Proceedings) and X.4 (Transparency - Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to at least two levels of appeal or review including at least one judicial or quasi-judicial level.

**ARTICLE 30: PENALTIES**

Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Annex.

**ARTICLE 31: CONFIDENTIALITY**

1. Nothing in this Annex shall be construed to require a Party to furnish or allow access to business information or to information relating to an identified or identifiable individual, the disclosure of which would impede law enforcement or would be contrary to that Party's legislation protecting business information and personal data and privacy.
2. Each Party shall maintain, in accordance with its law, the confidentiality of the information collected pursuant to this Annex and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information. Where the Party receiving or obtaining information is required by its laws to disclose the information, that Party shall notify the Party or person who provided that information.
3. Each Party shall ensure that the confidential information collected pursuant to this Annex shall not be used for purposes other than the administration and enforcement of determinations of origin and of customs matters, except with the permission of the person or Party who provided the confidential information.
4. Notwithstanding paragraph 3, a Party may allow information collected pursuant to this Annex to be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs related laws and regulations implementing and this Annex. A Party shall notify the person or Party who provided the information in advance of such use.
5. The Parties shall exchange information on their respective legislation on data protection for the purpose of facilitating the operation and application of paragraph 2.

**ARTICLE 32: ADVANCE RULINGS RELATING TO ORIGIN**

1. Each Party shall through its customs authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an [EU: operator] importer in its territory [CAN: or an exporter or a producer in the territory of another Party], on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning whether a good qualifies as an originating good under this Annex.
2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling.
3. Each Party shall provide that its customs authority:
  - (a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;
  - (b) shall, after it has obtained all necessary information from the person requesting the advance ruling, issue the ruling within 120 days; and
  - (c) shall provide to the person requesting the advance ruling a full explanation of the reasons for the ruling.

4. Where application for an advance ruling involves an issue that is the subject of:

- (a) a verification of origin;
- (b) a review by or appeal to the customs authority; or
- (c) judicial or quasi-judicial review in its territory;

the customs authority in accordance with its laws and regulations, may decline or postpone the issuance of the ruling.

5. Subject to paragraph 7, each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such later date as may be specified in the ruling.

6. Each Party shall provide to any person requesting an advance ruling the same treatment as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

7. The issuing Party may modify or revoke an advance ruling:

- a) if the ruling is based on an error of fact;
- b) if there is a change in the material facts or circumstances on which the ruling is based;
- c) to conform with an amendment of Chapter X (National Treatment and Market Access for Goods), or this Annex; or
- d) to conform with a judicial decision or a change in its domestic law.

8. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

9. Notwithstanding paragraph 8, the issuing Party may, in accordance with its domestic legislation, postpone the effective date of such modification or revocation for no more than 6 months.

10. Subject to paragraph 7, each Party shall provide that an advance ruling remains in effect and is honoured.

#### ARTICLE 33: DEFINITIONS

For purposes of this Annex:

**customs authority** means the governmental authority that is responsible under the law of a Party for the administration and application of customs laws and regulations;

**determination of origin** means a determination as to whether a good qualifies as an originating good in accordance with this Annex;

**exporter** means an exporter located in the territory of a Party ;

**identical originating products** means products that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those products under this Annex;

**importer** means an importer located in the territory of a Party;

**[EU: SECTION C  
CEUTA AND MELILLA**

**TITLE VII  
CEUTA AND MELILLA**

**ARTICLE 34: APPLICATION OF THE PROTOCOL**

1. The term "EU Party" does not cover Ceuta and Melilla.
2. Products originating in Canada, when imported into Ceuta or Melilla, shall enjoy in all respects the same customs regime as that which is applied to products originating in the customs territory of the Community under Protocol 2 of the *Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities*. Canada shall grant to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs regime as that which is granted to products imported from and originating in the EU Party.
3. For the purpose of the application of paragraph 2 concerning products originating in Ceuta and Melilla, this Protocol shall apply *mutatis mutandis* subject to the special conditions set out in Article 32.

**ARTICLE 35: SPECIAL CONDITIONS**

1. Providing they have been transported directly in accordance with the provisions of Article 13, the following shall be considered as:
  - (a) products originating in Ceuta and Melilla:
    - (i) products wholly obtained in Ceuta and Melilla; or
    - (ii) products obtained in Ceuta and Melilla in the manufacture of which products other than those referred to in subparagraph (a)(i) are used, provided that:

## LIMITE

- (A) the said products have undergone sufficient working or processing within the meaning of Article 5; or
  - (B) those products originate in a Party, provided that they have been submitted to working or processing which goes beyond the operations referred to in Article 6.
- (b) products originating in Canada:
- (i) products wholly obtained in Canada; or
  - (ii) products obtained in Canada, in the manufacture of which products other than those referred to in subparagraph(b)(i) are used, provided that:
    - (A) the said products have undergone sufficient working or processing within the meaning of Article 5; or
    - (B) those products originate in Ceuta and Melilla or in the EU Party, provided that they have been submitted to working or processing which goes beyond the operations referred to in Article 6.
2. Ceuta and Melilla shall be considered as a single territory.
3. The exporter or his authorised representative shall enter "Canada" or "Ceuta and Melilla" on origin declarations.
4. The Spanish customs authorities shall be responsible for the application of this Protocol in Ceuta and Melilla.]

### ANNEX [...]

#### TEXT OF THE ORIGIN DECLARATION

The origin declaration, the text of which is given below, must be completed in accordance with the footnotes. However, the footnotes do not have to be reproduced.

(Period: from \_\_\_\_\_ to \_\_\_\_\_<sup>1)</sup>)

The exporter of the products covered by this document (customs authorization No ...<sup>2)</sup> declares that, except where otherwise clearly indicated, these products are of ...<sup>3)</sup> preferential origin.

<sup>1</sup> When the origin declaration is completed for multiple shipments of identical originating products within the meaning of Article 16, paragraph 6, indicate the period for which the origin declaration will apply. The period shall not exceed 12 months. All importations of the product must occur within the period indicated. Where a period is not applicable, the field can be left blank.

..... 4  
(Place and date)  
..... 5  
(Signature and printed name of the exporter)

<sup>2</sup> For EU exporters: When the origin declaration is completed by an approved exporter within the meaning of Article 17, the exporter's customs authorization number shall be included. A customs authorization number is required only where the exporter is an approved exporter. When the origin declaration is not completed by an approved exporter, the words in brackets shall be omitted or the space left blank.

For Canadian exporters: The exporter's Business Number assigned by the Canada Revenue Agency shall be included.

<sup>3</sup> "Canada/EU" means [products] qualifying as originating under the rules of origin of the Canada-European Union Comprehensive Economic and Trade Agreement. For the purposes of when the origin declaration relates, in whole or in part, to products originating in Ceuta and Melilla, the exporter must clearly indicate the symbol "CM".

<sup>4</sup> These indications may be omitted if the information is contained on the document itself.

<sup>5</sup> Article 16 provides an exception to the requirement of the exporter's signature. Where the exporter is not required to sign, the exemption of signature also implies the exemption of the name of the signatory.

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### Bulgarian version

Износителят на продуктите, обхванати от този документ (митническо разрешение № ... (1)) декларира, че освен където е отбелязано друго, тези продукти са с ... преференциален произход (2).

### Spanish version

El exportador de los productos incluidos en el presente documento (autorización aduanera n° ... (1)) declara que, salvo indicación en sentido contrario, estos productos gozan de un origen preferencial ... (2).

### Czech version

Vývozce výrobků uvedených v tomto dokumentu (číslo povolení ... (1)) prohlašuje, že kromě zřetelně označených, mají tyto výrobky preferenční původ v ... (2).

### Danish version

Eksportøren af varer, der er omfattet af nærværende dokument, (toldmyndighedernes tilladelse nr. ... (1)), erklærer, at varerne, medmindre andet tydeligt er angivet, har præferenceoprindelse i ... (2).

### German version

Der Ausführer (Ermächtigter Ausführer; Bewilligungs-Nr. ... (1)) der Waren, auf die sich dieses Handelspapier bezieht, erklärt, dass diese Waren, soweit nicht anderes angegeben, präferenzbegünstigte ... (2) Ursprungswaren sind.

### Estonian version

Käesoleva dokumendiga hõlmatud toodete eksportija (tolliameti kinnitus nr. ... (1)) deklareerib, et need tooted on ... (2) sooduspäritoluga, välja arvatud juhul kui on selgelt näidatud teisiti.

### Greek version

Ο εξαγωγέας των προϊόντων που καλύπτονται από το παρόν έγγραφο (άδεια τελωνείου υπ' αριθ. ... (1)) δηλώνει ότι, εκτός εάν δηλώνεται σαφώς άλλως, τα προϊόντα αυτά είναι προτιμησησιακής καταγωγής ... (2).

### English version

The exporter of the products covered by this document (customs authorization No ... (1)) declares that, except where otherwise clearly indicated, these products are of ... (2) preferential origin.

### French version

L'exportateur des produits couverts par le présent document (autorisation douanière n° ... (1)) déclare que, sauf indication claire du contraire, ces produits ont l'origine préférentielle ... (2).

### Italian version

L'esportatore delle merci contemplate nel presente documento (autorizzazione doganale n. ... (1)) dichiara che, salvo indicazione contraria, le merci sono di origine preferenziale ... (2).

### Latvian version

Eksportētājs produktiem, kuri ietverti šajā dokumentā (muitas pilnvara Nr. ... (1)), deklarē, ka, izņemot tur, kur ir citādi skaidri noteikts, šiem produktiem ir priekšrocību izcelsme no ... (2).

### Lithuanian version

Šiame dokumente išvardintų prekių eksportuotojas (muitinės liudijimo Nr. ... (1)) deklaruoja, kad, jeigu kitaip nenurodyta, tai yra ... (2) preferencinės kilmės prekės.

### Hungarian version

A jelen okmányban szereplő áruk exportőre (vámfelhatalmazási szám: ... (1)) kijelentem, hogy eltérő jelzés hiányában az áruk kedvezményes ... (2) származásúak.

### Maltese version



## LIMITE

L-esportatur tal-prodotti koperti b'dan id-dokument (awtorizzazzjoni tad-dwana nru. ...<sup>(1)</sup>) jiddikjara li, hliet fejn indikat b'mod ċar li mhux hekk, dawn il-prodotti huma ta' origini preferenzjali ...<sup>(2)</sup>.

### Dutch version

De exporteur van de goederen waarop dit document van toepassing is (douanevergunning nr. ...<sup>(1)</sup>), verklaart dat, behoudens uitdrukkelijke andersluidende vermelding, deze goederen van preferentiële ... oorsprong zijn ...<sup>(2)</sup>.

### Polish version

Eksporter produktów objętych tym dokumentem (upoważnienie władz celnych nr. ...<sup>(1)</sup>) deklaruje, że z wyjątkiem gdzie jest to wyraźnie określone, produkty te mają ...<sup>(2)</sup> preferencyjne pochodzenie.

### Portuguese version

O abaixo assinado, exportador dos produtos cobertos pelo presente documento (autorização aduaneira n.º. ...<sup>(1)</sup>), declara que, salvo expressamente indicado em contrário, estes produtos são de origem preferencial ...<sup>(2)</sup>.

### Romanian version

Exportatorul produselor ce fac obiectul acestui document (autorizația vamală nr. ...<sup>(1)</sup>) declară că, exceptând cazul în care în mod expres este indicat altfel, aceste produse sunt de origine preferențială ...<sup>(2)</sup>.

### Slovenian version

Izvoznik blaga, zajetega s tem dokumentom (pooblastilo carinskih organov št. ...<sup>(1)</sup>) izjavlja, da, razen če ni drugače jasno navedeno, ima to blago preferencialno ...<sup>(2)</sup> poreklo.

### Slovak version

Vývozca výrobkov uvedených v tomto dokumente (číslo povolenia ...<sup>(1)</sup>) vyhlasuje, že okrem zreteľne označených, majú tieto výrobky preferenčný pôvod v ...<sup>(2)</sup>.

### Finnish version

Tässä asiakirjassa mainittujen tuotteiden viejä (tullin lupa n:o ...<sup>(1)</sup>) ilmoittaa, että nämä tuotteet ovat, ellei toisin ole selvästi merkitty, etuuskohteluun oikeutettuja ... alkuperä tuotteita ...<sup>(2)</sup>.

### Swedish version

Exportören av de varor som omfattas av detta dokument (tullmyndighetens tillstånd nr. ...<sup>(1)</sup>) försäkrar att dessa varor, om inte annat tydligt markerats, har förmånsberättigande ... ursprung ...<sup>(2)</sup>.

## [EU: JOINT DECLARATION

### concerning the Principality of Andorra

1. Products originating in the Principality of Andorra falling within Chapters 25 to 97 of the Harmonised System shall be accepted by Canada as originating in the Community within the meaning of this Agreement.
2. Protocol 6 shall apply *mutatis mutandis* for the purpose of defining the originating status of the above-mentioned products.

**LIMITE**

**JOINT DECLARATION**

**concerning the Republic of San Marino**

1. Products originating in the Republic of San Marino shall be accepted by Canada as originating in the Community within the meaning of this Agreement.
2. Protocol 6 shall apply *mutatis mutandis* for the purpose of defining the originating status of the above-mentioned products.]

## **CUSTOMS AND TRADE FACILITATION**

### **Article X-1: Objectives and Principles**

1. The Parties acknowledge the importance of customs and trade facilitation matters in the evolving global trading environment.
2. The Parties shall to the extent possible cooperate and exchange information, including information on best practices, for the purpose of promoting the application of and compliance with the trade facilitation measures agreed upon under this Agreement.
3. The Parties agree that measures to facilitate trade shall not hinder mechanisms to protect persons through effective enforcement of and compliance with national requirements.
4. The Parties agree that import, export and transit requirements and procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve legitimate objectives.
5. The Parties agree that international trade and customs instruments and standards shall be the basis for import, export and transit requirements and procedures, where such instruments and standards exist, except where they would be an inappropriate or ineffective means for the fulfillment of the legitimate objectives pursued.

### **Article X-2: Transparency**

1. Each Party shall publish or otherwise make available, including through electronic means, all their legislation, regulations, judicial decisions and administrative policies relating to its requirements for imported or exported goods.
2. Each Party shall endeavour to make public, including on the internet, any regulations and administrative policies governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.
3. Each Party shall designate or maintain one or more contact points to address inquiries by interested persons concerning customs matters and make available on the internet information concerning the procedures for making such inquiries.

### **Article X-3: Release of Goods**

**LIMITE**

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties and reduce costs for importers and exporters. Such procedures:
  - (a) shall allow for the release of goods within a period no greater than that required to ensure compliance with its Canadian domestic law and EU or EU Member States' legislation.
  - (b) may require the submission of more extensive information through post-entry accounting and verifications, as appropriate;
  - (c) shall allow goods, and to the greatest extent possible controlled or regulated goods, to be released at the first point of arrival ;
  - (d) shall endeavour to allow for the expeditious release of goods in need of emergency ;
  - (e) shall allow an importer or its agent to remove goods from custom's control prior to the final determination and payment of customs duties, taxes, and fees. Before releasing the goods, a Party may require that an importer provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument
  - (f) provide for, in accordance with Canadian domestic law and EU or EU Member States legislation simplified documentation requirements for the entry of low-value goods as determined by that Party

[C New paragraph: ]

2. Each Party shall allow for the expedited release of goods and, to the extent possible or where applicable, shall:
  - (a) provide for advance electronic submission and processing of information before physical arrival of goods to enable their release upon arrival, where no risk has been identified or where no random checks are to be performed and
  - (b) provide for clearance of certain goods with a minimum of documentation.
3. Each Party shall, to the extent possible, ensure that its authorities and agencies involved in border and other import and export controls cooperate and coordinate to facilitate trade by, inter alia, converging import and export data and documentation requirements, and establishing a single location for one-time documentary and physical verification of consignments.

4. Each Party shall ensure, to the greatest extent possible, that the requirements of its agencies related to the import and export of goods are coordinated to facilitate trade, regardless of whether these requirements are administered by an agency or on behalf of that agency by the customs administration.

**Article X-4- Customs Valuation**

1. The Agreement on the Implementation of Article VII of the GATT (1994) shall govern customs valuation applied to reciprocal trade between the parties.
2. The parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

**ARTICLE X-5: Classification of Goods**

The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature in conformity with the International Convention on the Harmonized Commodity Description and Coding System.

**Article X-6: Fees and Charges**

Each Party shall publish or otherwise make available information on fees and charges imposed by a customs administration, including through electronic means. This information shall include the applicable fees and charges, the specific reason for the fee or charge, the responsible authority and when and how payment is to be made. A Party shall not impose new or amended fees and charges until it publishes or otherwise makes available this information.

**Article X-7: Risk Management**

1. Each Party shall base its examination and release procedures and its post-entry verification procedures on risk assessment principles, rather than examining each shipment offered for entry in a comprehensive manner for compliance with all import requirements.
2. The Parties agree to adopt and apply their import, export and transit requirements and procedures for goods on the basis of risk management principles, to be applied to focus compliance measures on transactions that merit attention.
2. The above shall not preclude a Party from conducting quality control and compliance reviews, which may require more extensive examinations.

**Article X- 8: Automation**

1. Each Party shall use information technologies that expedite domestic procedures for the release of goods in order to facilitate trade including trade between the Parties.

**2. Each Party shall:**

- a) endeavour to make available by electronic means customs forms that are required for the import or export of goods;
- b) allow, subject to Canadian domestic law or EU or EU Member States' legislation, those customs forms to be submitted in electronic format; and
- c) where possible, through its customs administration, establish a means of providing for the electronic exchange of information with its trading community.

**3. Each Party shall endeavour to:**

- a) develop or maintain fully interconnected single window systems to facilitate a single, electronic submission of all information required by customs and non-customs legislation for cross-border movements of goods; and
- b) develop a set of data elements and processes in accordance with the WCO Data Model and related WCO recommendations and guidelines.

**4. The Parties shall endeavour to cooperate on the development of interoperable electronic systems, including taking account of the work at the WCO, in order to facilitate trade between the Parties.**

**[C: Article X-9: Advance Rulings for Tariff Classification**

- 1. Subject to Chapter X (Customs Procedures), a Party shall issue a written ruling prior to an importation in response to a written request by an importer in its territory, exporter or producer in the territory of the other Party, or their respective representatives.
- 2. A Party shall issue these rulings for tariff classification or rate of customs duty, except any form of surtax or surcharge, applicable upon importation;
- 3. For the purposes of paragraph 1, the issuance of advance rulings shall be administered in the same manner as the procedures set out in Article X.9 (Advance Rulings – Customs Procedures).]

**[EU: Article X-9- Advance Rulings**

1. Each Party shall issue upon written request advance rulings on tariff classification in accordance with its legislation.
2. Subject to any confidentiality requirements and in accordance with its legislation, each Party shall publish, (e.g. on the Internet), its advance rulings on tariff classification.
3. To facilitate trade, the Parties shall include in their bilateral dialogue regular updates on changes in their respective legislation and its implementation on the matters referred to in paragraphs 1 and 2.]

**Article X-10: Review and Appeal**

1. Each Party shall ensure that any administrative action or official decision taken in respect of the import of goods is reviewable promptly by judicial, arbitral or administrative tribunals or through administrative procedures.
2. Such tribunal or official acting pursuant to such administrative procedures shall be independent of the official or office issuing the decision and shall have the competence to maintain, modify or reverse the determination, in accordance with the Party's domestic law.
3. Each Party shall provide for an administrative level of appeal or review, independent of the official or, where applicable, the office responsible for the original action or decision, before requiring a person to seek redress at a more formal or judicial level.
4. Each Party shall grant substantially the same rights of review and appeal of determinations of advance rulings by its customs administration as it provides to importers in its territory to any person who has received an advance ruling pursuant to Article X-6 (Advance Rulings for Tariff Classification).

**Article X-11: Penalties**

Each Party shall ensure that its respective customs laws and regulations provide that any penalties imposed for breaches of customs regulations or procedural requirements be proportionate and non-discriminatory and, in their application, do not result in unwarranted delays.

**Article X-12: Confidentiality**

1. Each Party shall, in accordance with the Canadian domestic law and EU and EU Member States' legislation, treat as strictly confidential all information obtained pursuant to this Chapter that is by its nature confidential or that is provided on a confidential basis and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

2. Where the Party receiving or obtaining information is required by its laws to disclose the information, that Party shall notify the Party or person who provided the information.
3. Each Party shall ensure that the confidential information collected pursuant to this Chapter shall not be used for purposes other than the administration and enforcement of customs matters, except with the permission of the person or Party who provided the confidential information.
4. A party may allow information collected pursuant to this Chapter to be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs-related laws and regulations implementing this Chapter. A Party shall notify the person or Party who provided the information in advance of such use.

**Article X-13: Cooperation**

1. The Parties shall continue to cooperate in international fora, such as the World Customs Organization (WCO), to achieve mutually-recognized goals, such as those set out in the *WCO Framework of Standards to Secure and Facilitate Global Trade*.
2. The Parties shall regularly review relevant international initiatives on trade facilitation, including the Compendium of Trade Facilitation Recommendations, developed by the United Nations Conference on Trade and Development and the United Nations Economic Commission for Europe, to identify areas where further joint action would facilitate trade between the Parties and promote shared multilateral objectives.
3. The Parties agree to cooperate in accordance with the 1998 Agreement between Canada and the European Community on Customs Cooperation and Mutual Assistance in Customs Matters, including future amendments thereto.

**[Article X-14: Committee]**

Placeholder text: Reference to a possible Committee pending the outcome of the placement of the CETA committee structure for goods.]



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**LIMITE**

## TECHNICAL BARRIERS TO TRADE

### Article 1: Affirmation of the WTO TBT Agreement

The Parties affirm their rights and obligations under the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as the "TBT Agreement") [EC: which is hereby incorporated into and made part of this Agreement.]

*CN reserve. Will be returned to in future discussions.*

### Article 2: Scope and Definitions

This Chapter applies to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures of all levels of government that may affect trade in goods between the Parties. With respect to non-government bodies within their territories the Parties shall take such reasonable measures as may be available to them to ensure compliance with the provisions of this Chapter.

2. This Chapter does not apply to:

(a) purchasing specifications prepared by a governmental body for production or consumption requirements of governmental bodies ; or

(b) sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

3. For purposes of this Chapter, the definitions of Annex I to the TBT Agreement shall apply.

### Article 3: Joint Co-operation

The Parties shall strengthen their joint co-operation in the areas of technical regulations, standards, metrology, conformity assessment, market surveillance or monitoring and enforcement activities with a view to facilitating the conduct of trade between the Parties, as laid down in Chapter XXX (*Regulatory Co-operation*). This may include promoting and encouraging co-operation between their respective public or private organizations responsible for metrology, standardization, testing, certification and accreditation, market surveillance or monitoring and enforcement activities; and in particular, encouraging their accreditation and conformity assessment bodies to participate in co-operation arrangements that promote the acceptance of conformity assessment results.

### Article 4: Technical Regulations

1. The Parties undertake to co-operate as far as possible to ensure that their technical regulations are compatible. To this end, if a Party expresses an interest in developing a

technical regulation equivalent or similar in scope to one existing in or being prepared by the other Party, the other Party shall on request provide, to the extent practicable, the relevant information, studies, and data upon which it has relied in the development of its technical regulation. The Parties recognize that it may be necessary to clarify and agree on the scope of a specific request, and that confidential information may be withheld.

1. A Party that has prepared a technical regulation that it considers to be equivalent to a technical regulation of the other Party having compatible objective and product scope may request in writing that the other Party recognise it as equivalent. Such written request shall set out the reasons why the scopes and provisions of the technical regulations are considered to be equivalent. If the other Party does not agree that the technical regulations are equivalent, it shall on request explain its decision.

#### Article 5: Conformity Assessment

[CN: 1. If a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

2. Each Party shall accredit, approve, designate, notify, license or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favourable than those accorded to conformity assessment bodies in its territory.

3. Further to paragraph 2, a Party shall not require conformity assessment bodies in the territory of the other Party to establish a legal or physical presence in its own territory as a pre-condition to accrediting, approving, designating, notifying, licensing or otherwise recognizing said bodies.

4. Where a Party's regulatory authority relies entirely on accreditation to establish the technical competence of conformity assessment bodies, it shall rebuttably presume conformity assessment bodies in the territory of the other Party to be technically competent if they are accredited by an accreditation body which is signatory to:

- a) the International Laboratory Accreditation Cooperation (ILAC);
- b) the International Accreditation Forum (IAF); or
- c) a cooperation agreement or arrangement between accreditation bodies in the territory of the Parties.]

[EC: 5. The Agreement on mutual recognition between the European Community and Canada, signed in London on 14 May 1998 ("the MRA"), is hereby incorporated into and made part of this Agreement as a Protocol thereto. The [*institutional body*] shall assume the responsibilities of the Joint Committee referred to in Article XI of the MRA.]

*Depends on outcome of discussions on paras 1-4*

**Article 6: Transparency**

1. Each Party shall ensure that transparency procedures regarding the development of technical regulations and conformity assessment procedures allow interested parties to participate at an early appropriate stage when amendments can still be introduced and comments taken into account, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Where a consultation process on the development of technical regulations and or conformity assessment procedures is open to the public, each Party shall permit persons of the other Party to participate on terms no less favourable than those accorded to its own persons.

[CN: 2. Each Party shall recommend to standardization bodies in its territory that they observe paragraph 1 with respect to their consultation processes for the development of standards and voluntary conformity assessment procedures.] [EU: 2. The parties shall promote closer cooperation between the standardization organizations located within their territories with a view to facilitating, *inter alia*, the exchange of information about their respective activities, as well as participation in each other's technical committees based on mutual interest and reciprocity, according to modalities to be agreed by the standardization organizations concerned.]

[CN: 3. Each Party shall transmit electronically to the other Party's contact point, established under Article 10 of the TBT Agreement at the same time it submits its notification to the WTO Central Registry of Notifications in accordance with the TBT Agreement:

- (a) its proposed technical regulations and conformity assessment procedures, including those that are in accordance with the technical content of the relevant international standards and that may have an effect on trade; and
- (b) its technical regulations and conformity assessment procedures adopted to address urgent problems of safety, health, environmental protection or national security arising or threatening to arise.]

4. The transmission of technical regulations and conformity assessment procedures [CN: made pursuant to paragraphs 3] shall include an electronic link to, or a copy of, the full text of the document.

5. [CN: Further to subparagraph 3(a), e] Each Party shall endeavour to allow a period of at least 60 days following transmission of proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments. A Party shall give positive consideration to a reasonable request for extending the comment period.

[CN: 6. Where a Party has conducted an impact assessment of a proposed technical regulation or conformity assessment procedure, upon request from the other Party, it shall provide relevant information pertaining to its impact assessment including, to the greatest extent practicable:

- a) the methodology for the impact assessment and any related testing or studies;
- b) data employed in the preparation of the impact assessment; and
- c) the findings of the impact assessment including the Party's assessment of the risk or hazard in question.]

7. (i) Where a Party has received comments on its proposed technical regulations or conformity assessment procedures from the other Party, it shall reply in writing to such comments before adoption of the final technical regulation or conformity assessment procedure.

(ii) Each Party shall publish or otherwise make publicly available, in print or electronically, its responses or a summary of its responses, to significant comments it receives, no later than the date it publishes the final technical regulation or conformity assessment procedure.

8. Each Party shall, upon request of the other Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure, that the Party has adopted or is proposing to adopt.

9. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comment period following the transmission of a proposed technical regulation, to establish or extend the period of time between the adoption of the technical regulation and the day upon which it is applicable, except where such delay would be ineffective in fulfilling the legitimate objectives pursued.

10. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are publicly available on official websites.

11. Where a Party detains at a port of entry a good imported from the territory of the other Party on the grounds that the good has failed to comply with a technical regulation, it shall without undue delay notify the importer of the reasons for the detention of the goods.

#### **Article 7: Marking and Labelling**

With respect to technical regulations relating to labelling or marking requirements, the Parties shall ensure they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, such labelling or marking requirements shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks that non-fulfillment would create.

**Article 8: [EU: Management of this Chapter] [CN: Canada-EU CETA Committee on Technical Barriers to Trade]**

[EU: 1. The Parties agree to co-operate in the matters covered by this Chapter. In particular, they agree:]

[CN: 1. The Parties hereby establish a Canada-EU CETA Committee on Technical Barriers to Trade (herein referred to as the "Canada-EU CETA TBT Committee"), comprised of trade and relevant regulatory officials, as set out in Annex X.X.

2. The Canada-EU CETA TBT Committee's functions include:]

(a) to monitor the implementation of this chapter;

(b) promptly to address any issue that a Party raises [under this Chapter or the TBT Agreement,] related to the development, adoption or application of standards, technical regulations or conformity assessment procedures;

[CN: (c) on a Party's request, facilitating discussion of the assessment of risk or hazard conducted by the other Party, or the chosen level of protection related to a given measure;]

(d) to encourage cooperation between the standards and conformity assessment bodies of the Parties;

(e) facilitating requests made by either Party for their technical regulations, [CN: the results of conformity assessment procedures, or conformity assessment bodies to be accepted or] recognised in the territory of the other Party;

(f) to exchange information on standards, technical regulations, and conformity assessment procedures including those of third parties or international bodies where there is a mutual interest in doing so;

(g) reviewing this Chapter in the light of any developments in the WTO TBT Committee or under the TBT Agreement, and, if necessary, developing recommendations for amendments to this Chapter [for consideration by the [CETA Trade Council];

(h) taking any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade between the Parties.

[ (i) on a Party's request, facilitating consultations between the Parties on any matter arising under this Chapter. These consultations shall constitute consultations under Article XXXX (Dispute Settlement - Consultations) and shall be governed by the procedures set out in that Article.];

[CN: (j) reporting to the [CETA Trade Council] on the implementation of this Chapter as appropriate;]

*Depending upon the outcome of the discussions on the committee structure.*

3. Where a matter covered under this [Chapter or the TBT Agreement] cannot be clarified or resolved through the [Canada-EU CETA TBT Committee], the Parties may establish ad hoc technical working groups with a view to identifying workable and practical solutions that would facilitate trade. Such groups shall be jointly led by the Parties. Where a Party declines a request from the other Party to establish a working group, it shall, on request, explain the reasons for its decision.

4. Any information that is provided at the request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable period of time. A Party shall endeavour to respond to each such request within 60 days.

[CN: 5 Each Party is responsible for ensuring that the relevant institutions and persons in its territory participate, as appropriate, in the activities related to this Chapter and for coordinating such participation. The Canada-EU CETA TBT Committee shall meet once a year unless the Parties otherwise agree. The Canada-EU CETA TBT Committee shall carry out its work through communication channels agreed to by the Parties, which may include electronic mail, videoconferencing or other means.]

**[CN: Article 9: Entry into Force]**

The Parties shall implement this Chapter as soon as is practicable and under no circumstances later than [x] years from the date of entry into force of this Agreement.]

**[CN: Annex 1]**

**Canada-EU CETA TBT Committee**

The Parties shall be represented at the Canada-EU CETA TBT Committee by:

- (a) in the case of the European Union, the European Commission; and
- (b) in the case of Canada, the Department of Foreign Affairs and International Trade, or its successor.] [EC: See note to Article 8]

## REGULATORY COOPERATION

### Article X.1: Scope

This Chapter applies to regulatory measures, including the development and review thereof, of the [CAN: Parties' regulatory authorities] that are covered by the TBT Agreement, the SPS Agreement, the GATT 1994, and the GATS, [including Chapters [X,Y,Z] of this agreement,] including methodological aspects of the development of regulations.

### Article X.2: Principles

1. The Parties affirm their rights and obligations relating to regulatory measures under the TBT Agreement, SPS Agreement, GATT 1994 and GATS.
2. The Parties commit themselves to ensuring high levels of protection for human, animal and plant life or health, and the environment in accordance with the TBT Agreement, SPS Agreement, GATT 1994 and GATS.
3. The Parties recognise the value of regulatory cooperation with their relevant trading partners on regulatory issues both bilaterally and multilaterally. The Parties will, whenever practicable and mutually beneficial, approach regulatory cooperation in a way that is open to participation by other international trading partners.
4. Without prejudice to the ability of either Party to carry out its regulatory, legislative and policy activities, the Parties commit themselves to further developing their regulatory cooperation in light of their mutual interest to (a) prevent and eliminate unnecessary barriers to trade and investment; (b) enhance the climate for competitiveness and innovation, including through pursuing regulatory compatibility, recognition of equivalence, and convergence [and the adoption of regulatory techniques which are able to accommodate technological advances to the extent appropriate], and (c) promote transparent, efficient and effective regulatory processes that better support public policy objectives and fulfil the mandates of regulatory bodies, including through the promotion of information exchange and enhanced use of best practices.
5. The provisions of this Chapter replace the Government of Canada – European Commission Framework on Regulatory Cooperation and Transparency and shall govern all activities previously undertaken in the context of that Framework.
6. The Parties may undertake regulatory cooperation activities, on a voluntary basis. For greater certainty, neither Party is obliged to enter into particular regulatory



cooperation activities, and either Party may refuse to cooperate or may withdraw from cooperation. However, if a Party refuses to initiate or withdraws from regulatory cooperation it should be prepared to explain the reasons for its decision to the other Party.

**[Article X.3 Objectives of Regulatory Cooperation]**

1. The objectives of regulatory co-operation include

*A. Contributing to the protection of human life, health or safety, animal or plant life or health, and the environment.*

to contribute to the protection of human life, health or safety, animal or plant life or health and the environment by:

- (a) leveraging international resources in areas such as research, pre-market reviews and risk analysis to address important regulatory issues of local, national and international concern; and
- (b) contributing to the base of information used by regulatory departments for identifying, assessing and managing risks.

*B. Strengthening regulatory governance and creating better regulation*

to build trust, deepen mutual understanding of regulatory governance and obtain from each other the benefit of expertise and perspective to:

- (a) improve the planning and development of regulatory proposals;
- (b) promote transparency and predictability in the development and establishment of regulations
- (c) enhance the efficacy of regulations;
- (d) identify alternative instruments;
- (e) recognize the associated impacts of regulations;
- (f) avoid unnecessary regulatory differences; and
- (g) improve regulatory implementation and compliance.

*C. Facilitating trade and investment*

to facilitate bilateral trade and investment by:

- (a) building on previously existing co-operative arrangements;
- (b) reducing unnecessary differences in regulation; and
- (c) identifying new ways of working for co-operation in specific sectors.

*D. Promoting competitiveness and enhancing the climate for innovation*

to contribute to the improvement of competitiveness and efficiency of industry by:

- (a) minimizing administrative costs wherever possible;
- (b) reducing duplicative regulatory requirements and consequent compliance costs wherever possible; and
- (c) pursuing compatible regulatory approaches including where possible and appropriate:
  - (i) the application of regulatory approaches which are technology-neutral;
  - (ii) recognizing equivalence and convergence.]

#### **Article X.4 Regulatory Cooperation Activities**

1. The Parties shall endeavour to fulfil the objectives set out in article X.3 by undertaking regulatory co-operation activities including:

**(a) *Regulatory Governance***

Engaging in ongoing bilateral discussions, including to:

- (i) discuss regulatory reform and its effects on the Canada-EU relationship;
- (ii) identify lessons learned;
- (iii) explore, if appropriate, alternative approaches to regulation, and
- (iv) exchange experiences with regulatory tools and instruments, including regulatory impact assessments, risk assessment and compliance and enforcement strategies.

**(b) *Consultation and Exchange of Information***

1. Consulting with each other as appropriate, and exchanging information during the regulation development process. This consultation and exchange may occur throughout the development process, and should begin as early as possible in that process.

2. Sharing non-public information to the extent that such information may be shared with foreign governments in accordance with the applicable rules of the Party

**(c) *Sharing Information on Regulatory Proposals***

1. Sharing proposed technical or sanitary and phytosanitary regulations that may have an impact on trade with their counterparts at as early a stage as possible so that comments and proposals for amendments may be taken into account,

2. Providing, upon request by their counterparts, copies of the proposed regulation, subject to applicable privacy laws, and allow sufficient time for interested parties to provide comments in writing.

**(d) *Selection of Regulatory Approaches***

1. Exchanging information about contemplated regulatory actions, measures or amendments under consideration, at the earliest stage possible, in order to:

- a. better understand the rationale behind regulatory choices, including instrument choice and examine the possibilities for greater convergence on how to state the objectives of regulations and to define the scope of regulations. The interface between regulations, voluntary standards and conformity assessment should also be addressed in this context;
- b. compare methods and assumptions used in analyzing regulatory proposals, including, when appropriate, analysis of technical or economic practicability, and benefits in relation to the objective pursued, of any major alternative regulatory requirements and approaches considered. This information exchange should also include compliance strategies, and impact assessments, including a comparison of the potential cost-effectiveness of the regulatory proposal to that of major alternative regulatory requirements and approaches considered;
- c. examine opportunities to minimize unnecessary divergences in regulations through means such as:
  - (i) achieving harmonized, equivalent or compatible solutions, or
  - (ii) considering the use of mutual recognition in specific cases.

2. Conducting concurrent or joint risk assessment and regulatory impact assessments if practicable and mutually beneficial.

(e) *International Standards, Guides and Recommendations*

Cooperating on issues regarding the development, adoption, implementation and maintenance of international standards, guides and recommendations.

(f) *Identification and Selection of Issues to be Addressed through Regulation*

Data collection

1. Examining the appropriateness and possibility of collecting the same or similar data about the nature, extent and frequency of problems potentially warranting regulatory action when it would expedite making statistically significant judgments about those problems.

2. Periodically conducting comparisons of data collection practices.

Data collection methodologies:

3. Examining the possibility and appropriateness of using the same or similar assumptions and methodology as those used by their counterparts for analyzing

the data and determining the magnitude and causes of specific problems and, on this basis, to consider possibilities to bring them closer.

4. Periodically comparing analytical assumptions and methodologies.

Compliance Strategies:

5. Exchanging information on the administration, implementation and enforcement of regulations, as well as on the means to obtain and measure compliance.

*(g) Research supporting the Development of Regulation*

conducting co-operative research agendas in order to:

- (1) reduce duplicative research
- (2) generate more information at less cost;
- (3) gather the best data;
- (4) establish, when appropriate, a common scientific basis;
- (5) address the most pressing regulatory problems in a more consistent and performance-oriented manner; and
- (6) minimize unnecessary differences in new regulatory proposals while more effectively improving health, safety and environmental protection.

*(h) Post-implementation review of regulations*

1. Conducting post implementation reviews of regulations or policies.
2. Comparing methods and assumptions used in those post implementation reviews.
3. When applicable, making summaries of the results of those post-implementation reviews available to each other.

*(i) Reviewing existing regulatory differences*

Identifying the appropriate approaches to reducing any adverse effects of existing regulatory differences on bilateral trade and investment in sectors identified by a Party, including, when appropriate, through greater convergence, mutual recognition, minimising the use of trade distorting regulatory instruments, and use of international standards including standards and guides for conformity assessment.

**Article X.5: Compatibility of Regulations**

When developing or reviewing regulatory measures, each Party shall consider the regulatory measures or initiatives of the other Party on the same or related topics with a view to enhancing convergence and compatibility between their respective regulatory measures, when appropriate. In accordance with Article 2, this consideration does not prevent either Party from adopting differing measures or pursuing differing approaches for reasons including different institutional and legislative approaches, or circumstances, values or priorities particular to that Party. [CAN: When differing measures are proposed, a Party shall, upon request of the other Party, provide a written explanation regarding the rationale for the differing measure.]

**[CAN: Article X.6: Role and Composition of the Regulatory Cooperation Committee]**

1. In addition to the functions set out in the Framework, the Regulatory Cooperation Committee (hereinafter "the RCC"), created under Paragraph 23 of the Framework, shall oversee and review the implementation of this Chapter.
2. The RCC shall perform the following functions:]

[In order to promote, facilitate and encourage regulatory cooperation between the Parties, the Parties hereby [CAN: establish][EC: charge / "TBD"] the [EC: "Body"] [CAN: Regulatory Cooperation Committee] to:

- (a) Provide a forum for discussion of regulatory issues of mutual interest identified by the Parties through, *inter alia*, any consultations conducted in accordance with Article X.8;
- (b) Assist individual regulators in identifying potential partners for cooperation activities and provide appropriate tools, such as model confidentiality agreements;
- (c) Review regulatory initiatives, whether in progress or anticipated that either Party considers provide potential for cooperation; these reviews, which will be carried out in consultation with regulatory departments and agencies, should support the implementation of this Chapter;
- (d) Maintain an overview of current regulatory cooperation activities, on the basis of reports obtained from regulatory departments and agencies, which will provide information to stakeholders, political leaders and senior management about the aims, objectives and achievements of the individual regulatory cooperation initiatives;
- (e) Annually produce and make publicly available a report summarizing, *inter alia*:

(i) Progress in regulatory cooperation activities over the past twelve months;

(ii) Areas where regulators have agreed to cooperate in the future;

(f) Adopt its own terms of reference, procedures and work-plan for administration and implementation of [this Chapter]; and

(g) Report to the [CETA's Trade Council] on implementation of [this Chapter] as appropriate.]

[CAN: 3. The RCC is co-chaired by the Government of Canada and the European Commission, and is comprised of relevant officials of each Party, at a level and by means deemed appropriate by each Party. The RCC shall meet at least annually. The Parties may invite others to participate in the meetings of the RCC.]

#### Article X.7: Further Cooperation of Parties

1. The Parties agree to explore mechanisms in the future to address issues such as plant, animal and food-related human health issues that are outside the scope of the Canada-EC Agreement on Sanitary Measures to protect Public and Animal Health in respect of Trade in Live Animals and Animal Products.

2. Pursuant to Article X.5.2(c) and to enable monitoring of forthcoming regulatory projects and to identify opportunities for regulatory cooperation, the Parties shall:

(a) Periodically exchange information of ongoing or planned regulatory projects in their areas of responsibility. This information should include, where appropriate, new technical regulations, and the amendments to existing technical regulations that are likely to be proposed or adopted and

( [CAN: (b) Upon request by either Party concerning a specific proposal, supplement the information referred to in Article X.7.2(a) with information, if known and available, regarding, *inter alia*:

(i) regulatory approaches under consideration by a Party, and

(ii) the potential benefits, costs and other impacts, both domestic and non-domestic, of those regulatory approaches.]

3. The Parties may facilitate regulatory cooperation through the exchange of officials pursuant to a specified arrangement.

4. The Parties agree to cooperate and share information on a voluntary basis in the area of consumer product safety. Such cooperation and exchange of information may include, but is not limited to:

- scientific, technical, and regulatory information, to help ensure the safety of consumer products;
- information on emerging issues of significant health and safety relevance within their scope of authority;
- information on standardisation activities and cooperation in comparatively assessing specific product safety standards and in initiating and where applicable endorsing standardisation activities according to their respective rules and procedures;
- information on market surveillance and enforcement activities;
- information on risk assessment methods and product testing;
- information on dangerous products and preventive and corrective measures taken in their regard.

[The modalities and further details of the cooperation, including the areas of information exchange covered by this agreement, confidentiality rules, possible reciprocal access to information systems such as the European Commission's RAPEX system and Health Canada's Consumer Product Incident Reporting System, and the conditions of the termination of the agreement will be agreed in a separate document linked to this agreement. This document shall be agreed by *<a committee to be determined>* and no exchange of confidential data nor any grant of access to data systems shall be possible until this document is signed.]

#### **Article X.8: Consultations with Private Entities**

In order to gain non-governmental perspectives, the Parties may jointly or otherwise consult with stakeholders and interested parties, including representatives from academia, think-tanks, non-governmental organizations, business, consumer and other organizations by any means they deem appropriate on matters relating to the implementation of this Chapter.

**[C: CHAPTER FIVE  
SANITARY AND PHYTOSANITARY MEASURES]**

**[C: Article 501: Objectives]**

The objectives of this Chapter are to:

- (a) protect human, animal and plant life or health in the territory of each Party;
- (b) ensure that the Parties' sanitary and phytosanitary (SPS) measures do not create unjustified barriers to trade; and
- (c) enhance the implementation of the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement)*.]

**[C: Article 502: Scope and Coverage]**

This Chapter applies to all SPS measures that may, directly or indirectly, affect trade between the Parties.]

**[C: Article 503: Definitions]**

**sanitary or phytosanitary measure** means any measure referred to in Annex A, paragraph 1 of the SPS Agreement;

**SPS Agreement** means the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures*;]

**[C: Article 504: Rights and Obligations]**

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO SPS Agreement.
2. The Parties agree to use the WTO dispute settlement procedures for any formal disputes regarding SPS measures.]



**[C: Article 505: Committee on Sanitary and Phytosanitary Measures**

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (SPS Committee), comprising representatives of each Party from the relevant trade and regulatory agencies, ministries or other institutions who have responsibility for SPS matters.
2. The SPS Committee shall
  - (a) provide a regular forum for exchange of information relating to each Party's regulatory systems, including the scientific and risk assessment basis for SPS measures;
  - (b) provide direction for the identification, management and resolution of SPS issues; and
  - (c) improve understanding between the Parties related to specific implementation issues concerning the *WTO SPS Agreement*, including clarification of regulatory frameworks and decision making procedures
3. The SPS Committee may consider, among other things, the following:
  - (a) the promotion of enhanced transparency of SPS measures;
  - (b) the promotion of cooperation between the Parties on SPS issues under discussion in multilateral and international fora including the WTO SPS Committee, the Committees of the Codex Alimentarius Commission, the International Plant Protection Convention (IPPC), and the World Organization for Animal Health (OIE).
4. Unless the Parties otherwise agree, the SPS Committee shall meet no later than six months following the entry into force of this Agreement. The SPS Committee shall establish its rules of procedures and work program at its first meeting.
5. Following its initial meeting, the SPS Committee shall meet as required, normally on an annual basis. If agreed by the Parties, a meeting of the SPS Committee may be held by videoconference or teleconference.
6. The SPS Committee shall report annually on its activities and work program to the [CETA Oversight Body].
7. Upon entry into force of this Agreement, each Party shall designate a Contact Point to coordinate the SPS Committee's agenda and to facilitate communications on SPS matters.
8. With respect to measures related to trade in live animals and animal products:

- a) The SPS Committee may refer an SPS issue, within the scope of the *Agreement between the European Union and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in animal and animal products (Veterinary Agreement)*, signed December 17, 1998, to the Joint Management Committee for Veterinary Issues (JMC on Veterinary Issues) established under that agreement.
- b) If the SPS Committee refers an SPS issue to the Joint Management Committee for Veterinary Issues for consideration, the SPS Committee may set the terms of reference to the JMC and it may request that the JMC provide a report on its findings to the SPS Committee.
- c) A referral to the JMC on Veterinary Issues is without prejudice to the SPS Committee taking any other action regarding the issue, including a referral to the [CETA Oversight Body].
- d) As appropriate, the JMC on Veterinary Issues may refer issues to the CETA SPS Committee for consideration.

9. With respect to measures related to trade in plants, plant products and other regulated articles:

- a) Annex XXX and the WTO SPS Agreement shall govern the rights and obligations of the Parties.
- b) The SPS Committee may refer an SPS issue, within the scope of Annex XXX, to the Joint Management Committee on Plant Issues (Plant JMC), established under Annex XXX.
- c) If the SPS Committee refers an SPS issue to the Plant JMC for consideration, the SPS Committee may set the terms of reference to the JMC and it may request that the JMC report back to the SPS Committee with its findings.
- d) As appropriate, the Plant JMC may refer issues to the CETA SPS Committee for consideration.
- e) A referral to the JMC on phytosanitary issues is without prejudice to the SPS Committee taking any other action regarding the issue, including a referral to the [CETA Oversight Body].

10. With respect to SPS issues not within the scope of the Veterinary Agreement or Annex XXX of this Agreement, the Parties may establish Sub-committees, as appropriate, to identify and discuss technical and scientific issues within the scope of this Agreement, including food safety, plant health or animal health.

11. The SPS Committee and/or sub-committees may also establish ad hoc technical working groups as needed.

12. A Party may refer any SPS issue to the SPS Committee. The SPS Committee should consider any matter referred to it as expeditiously as possible.

Pursuant to paragraph 10, in the event that the SPS Committee is unable to resolve an issue expeditiously, the SPS Committee shall, upon request of a Party, report promptly to the CETA Oversight Body on the matter.]

**Section 1.10 [EU: SECTION**

**Section 1.11 SANITARY AND PHYTOSANITARY MEASURES**

This Agreement does not affect the Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in animals and animal products,]

*Article*

**[EU: Phytosanitary measures**

1. The objective of this section is to facilitate trade between the Parties in the field of phytosanitary legislation, whilst safeguarding plant health by further implementing the principles of the WTO on the Application of Phytosanitary Measures ("the WTO SPS Agreement").
2. The objectives of this section are pursued through the "Agreement on Phytosanitary Measures Applicable to Trade in Plants and Plant Products. which is attached as Annex XXX.
3. By way of derogation from Article ..., the Committee, when dealing with phytosanitary measures, shall be composed of representatives of the EU and Canada with responsibility for Phytosanitary matters. This Committee shall then be called the "Joint Management Committee for Phytosanitary Matters". The functions of the Committee are set out in Article 16 of Annex XXX.
4. For the purpose of Article 184, consultations held under Article 16 of Annex XXX shall be deemed to constitute the consultations referred to in Article ..., unless the Parties decide otherwise.]

**ARTICLE II. [EU: ANNEX XXX**

(Referred to in Article ...)

**AGREEMENT**

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**ON PHYTOSANITARY MEASURES APPLICABLE TO TRADE IN PLANTS  
AND PLANT PRODUCTS**

The Parties, as defined in Article ... of the CETA:

DESIRING to facilitate trade between the EU and Canada in plants and plant products, whilst safeguarding plant health;

CONSIDERING that the implementation of the present Agreement shall take place in accordance with the internal procedures and legislative processes of the Parties;

CONSIDERING that recognition of equivalence will be gradual and progressive and should apply to priority sectors;

CONSIDERING that one of the objectives of Part IV, Title I of the Agreement is to progressively and reciprocally liberalise trade in goods in accordance with the GATT 1994;

REAFFIRMING their rights and obligations under the WTO Agreement and its Annexes and in particular the SPS Agreement;

DESIRING to ensure full transparency as regards phytosanitary measures applicable to trade, to have a common understanding of the WTO SPS Agreement and to implement its principles and provisions;

RESOLVED to take the fullest account of the risk of spread of pests and of the measures put in place to control and eradicate such pests, to protect plant health while avoiding unnecessary disruptions to trade;

HAVE AGREED AS FOLLOWS:]

*Article 1*  
**Objectives**

1. The objective of this Agreement is to facilitate trade in plants, plant products and other regulated articles between the Parties, whilst safeguarding plant health, by :
  - (a) ensuring full transparency as regards Phytosanitary measures applicable to trade;
  - (b) establishing a mechanism for the recognition of equivalence of such Phytosanitary measures maintained by a Party
  - (c) recognition of the plant health status of the other Party and recognizing pest status, pest free areas, and areas of low pest prevalence;

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- (d) further implementing the principles of the WTO SPS Agreement;
- (e) establishing mechanisms and procedures for trade facilitation; and
- (f) improving communication and co-operation between the Parties on phytosanitary measures.

*Article 2*

**Multilateral obligations**

The Parties reaffirm their rights and obligations under the WTO Agreement and, in particular, the WTO SPS Agreement and under the International Plant Protection Convention (IPPC).

*Article 3*

**Scope**

1. This Agreement applies to phytosanitary measures applied by either party to plants, plant products, and regulated articles in so far as they affect trade between the Parties.
- 2.] The Committee [EU: mentioned] [C: established] in Article [EU: 16] [C: 507.2] may [EU: modify] [C: elaborate] this Agreement by means of a decision to extend the scope to other measures affecting trade in plants, plant products, and other regulated articles between the Parties.

*Article 4*

**Definitions**

For the purposes of this Agreement definitions in Annex A of the WTO SPS Agreement and IPPC definitions will be used where they exist. In addition, the following definitions shall apply:

[EU:

a) "Protected Zones" means, in the case of the EU, zones within the meaning of Article 2(1)(h) of COUNCIL DIRECTIVE 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, or any successor provision]

[C: b) "Agreement" means the entire text of this Agreement and all its Appendices.]

*Article 5*

**Competent authorities**

1. The competent authorities of the Parties are described in Appendix I.

[C: 2. The Parties shall inform each other of [EU: or] any significant changes to the structure, organisation of their competent authorities unless otherwise notified to the relevant international organizations].

*Article 6*

**[EU: Recognition of pest status, pest free areas, protected zones and areas of low pest prevalence**

*A. Recognition of pest status*

**Each Party shall establish a list of regulated pests based on the following principles:**

1. Pests not known to occur within any part of its own territory.
2. Pests known to occur within any part of its own territory and under official control.
3. Pest known to occur within any part of its own territory, under official control and for which pest free areas/protected zones are established.
4. Any change to the list of pest status will be immediately notified to the other Party unless otherwise notified to the relevant international organization.

*B. Recognition of Pest Free Areas (PFAs) and protected zones*

1. The Parties recognise the concept of PFAs, and their application in respect of ISPM 4, as amended from time to time, and protected zones
2. Each Party shall ensure that trade in plants, plant products and other goods takes account of the pest status in an area or zone recognised by the other Party.

*C. Recognition of areas of low pest prevalence*

1. The Parties recognise the concept of Areas of Low Pest Prevalence, in respect of ISPM 29, as amended from time to time. The Parties commit to discuss the application of Areas of Low Pest Prevalence with respect to trade in plants, plant products, and regulated articles.
2. Each Party shall ensure that trade in plants, plant products and other goods takes account of the pest status in an area or zone recognised by the other Party.

**[C: Recognition of pest status, pest free areas, pest free place of production, pest free production site, areas of low pest prevalence and protected zones**

A. *Recognition of pest status, pest free areas, pest free place of production, pest free production site, areas of low pest prevalence and protected zones*

3. Each Party shall ensure that trade in plants, plant products and other regulated articles takes account of the pest status in an area, including pest free areas, pest free place of production, pest free production site, areas of low pest prevalence and protected zones recognised by the other Party.

Upon request of the exporting party, and the agreement of the importing Party, the importing Party shall take the necessary legislative or administrative measures to allow import on that basis of the recognition of pest status in an area, without undue delay.]

#### Article 7

##### **Determination and recognition of equivalence of Phytosanitary Measures**

1. A party may recognize the other Party's individual measure or group of measures or applicable systems as equivalent in accordance with the relevant ISPMs.

[EU: 2. The importing Party shall recognize a phytosanitary measure, group of measures, or applicable systems as equivalent if the exporting Party objectively demonstrates that its measure achieves the importing Party's appropriate level of protection.

3. Should either Party change its phytosanitary measure, group of measures, or applicable systems recognized as equivalent that Party must determine whether equivalence is maintained and needs to be reviewed. In case of a review that Party shall consult with the other Party without undue delay.]
4. The other Party shall have the right to comment on the review of the equivalence and to provide additional assurances for addressing the concerns related to the new measures. The previously recognised equivalence remains applicable until the end of the consultation and review period or the legislative amendment process that had established the equivalence. In the case of a significant safety risk the importing country reserves the right of applying emergency measures in accordance with the provisions of Article 14X.]

*Article 8*  
**Transparency**

1. The importing Party shall make available its phytosanitary import requirements for all commodities. This information shall include, as appropriate the additional declarations, as prescribed by the importing Party.
2. [C: For the notification by the Parties of amendments or proposed amendments of the requirements referred to in paragraph 1:
  - a. They shall comply with the provisions of the WTO SPS Agreement.
  - b. Without prejudice to the provisions of Article 16, the importing Party shall take into consideration the transport time between the Parties to establish the date of entering into force of the amended phytosanitary import requirements referred to in paragraph 1.
  - c. Without prejudice to the provisions of Article 16, in case of failure by the importing Party to comply with these notification requirements, the importing Party shall continue to accept the commodity under the previously applicable phytosanitary import requirements.]

*Article 9*  
**Trade Conditions**

[C:

- a. The Parties agree to actively explore ways to apply their import requirements to the total territory of the exporting party and to reinforce predictable and smooth trade between the Parties.] [EU: Import requirements shall be restricted to ensuring the absence of regulated pests in the Importing Party and shall be applicable to the total territory of the exporting Party.]
- b. For conditions affecting trade of [EU: the commodities] [C: regulated articles], upon request of the exporting Party, the Parties shall enter into consultations in accordance with the provisions of Article [C:15 (consultations)] [EU: 16] , in order to agree on alternative or [C: additional import conditions of the importing Party.] [EU: equivalent measures of the exporting Party meeting the import conditions of the importing Party] [C: Such alternative or additional import conditions may, when appropriate, be based on measures of the exporting Party which are recognised as equivalent by the importing Party.] If agreed, the importing Party shall take the necessary legislative and/or administrative measures to allow import on that basis, without undue delay.
- c. Upon request of a Party, the other Party shall provide full explanation and supporting data for the determinations and decisions covered by this Article, subject to the domestic laws of each Party.

[EU: 4. Import shall not be subject to specific import authorisations.]



5. Consignments of regulated commodities shall be accepted without pre-clearance of the [EU: exporting Parties' certification system.] [C: commodity on a consignment basis] [C: , unless bilaterally agreed].

*Article 10*  
**Phytosanitary Certification**

[EU: 1 The Parties agree that phytosanitary certification at importation shall be carried out on the basis of the importing Party's rules.]

2. The Committee referred to in Article 16 may agree on rules to be followed in case of electronic certification, withdrawal or replacement of certificates.

[EU: 3 The Parties shall take all necessary steps to ensure the integrity of the certification process, to guard against fraud and prevent false and misleading certification.

4 The exchange of original phytosanitary certificate(s) information may occur by paper based systems and / or secure methods of electronic data transmission offering equivalent certification guarantees. Where the exporting Party elects to provide electronic official certificates the importing Party must have determined that equivalent security guarantees are being provided. The importing Party's agreement for the exclusive use of electronic certification can either be recorded in the Appendix to the Agreement or by correspondence in accordance with Article 16(2) to the Agreement. ]

**[EU: Article 11**  
**Audit**

1. In order to maintain confidence in the effective implementation of the provisions of this Agreement, each Party, within the scope of this Agreement, has the right:
  - (a) to carry out, in accordance with the guidelines of Appendix VII, audit of all or part of the other Party's authorities' phytosanitary procedures. The expenses of such audit shall be borne by the Party carrying out the audit;
2. Either Party may share the results and conclusions of its audits with third countries, and make them publicly available.]

*Article 12*  
**[EU: Import checks and inspection fees]**

[EU:

1. The frequency and nature of phytosanitary checks of consignments at importation shall be based on the risk to plant health.

2. The inspection fees and the frequency rate of import checks may be set out in Appendix VIII or may be addressed by the Committee. The Committee may address any other requests by the Parties for the modification of import checks.

3. In the event that import checks reveal non-conformity with the relevant import requirements, the action taken by the importing Party shall be based on an assessment of the risk involved and the least trade restrictive measures.]

*Article 13*  
**Information exchange**

1. The Parties shall exchange information which is relevant for the implementation of this Agreement on a systematic basis, for developing standards, for providing assurance, for engendering mutual confidence and for demonstrating the efficacy of the official phytosanitary procedures. Where appropriate, this exchange of information may include exchanges of officials.

2. The Parties shall also exchange information on other relevant topics including:

- (a) any significant changes to the structure, organisation of their competent authorities;
- (b) significant events concerning commodities covered by this Agreement, including information exchange provided for in Articles 7 and 8;
- (c) on request, the results of a Party's official phytosanitary controls and a report concerning the results of the controls carried out;
- (d) any amendment concerning the measures affecting import checks and inspection fees and of any significant changes in the administrative conduct for such checks.
- (e) the results of import checks provided for in Article 12 in case of rejected or non-conforming consignments of plants and plant products;
- (e) on request, pest risk analyses (PRAs) and scientific opinions, relevant to this Agreement and produced under the responsibility of a Party;
- (f) notifications of interception for regulated pests.

3. On request, the Parties shall provide for the submission of scientific information to the relevant scientific fora to substantiate any views or claims made in respect of a matter arising under this Agreement. Such information shall be evaluated by the relevant scientific fora in a timely manner, and the results of that examination shall be made available to both Parties.

4. When the information referred to in this Article has been made available by notification to the WTO or relevant international organizations in accordance with the relevant rules [EU: . When the above information has been made available on an official, publicly accessible and fee free web-sites of the Parties and a notification to the other Party has taken place], the information exchange shall be considered to have taken place.

The contact points for the information exchange referred to in this Article are to be established.

*Article 14*

**Notification [C : of Non-Compliance] [EU: and consultation]**

[EU:

1. Each Party shall notify in writing to the other Party without undue delay of any serious or significant plant health risk concerning:

- (a) [CA: pest status, pest free areas, pest free place of production, pest free production site, areas of low pest prevalence] [EU: the pest free areas or protected zones referred to in Article 6;
- (b) the pest status of any relevant pests;
- (c) on request findings of phytosanitary relevance or important associated risks with relevant pests ; and
- (d) on request any additional measures beyond the basic requirements of their respective measures taken to control or eradicate pests.]

*[C: Article 15  
Consultations*

- 1. Where a Party has serious concerns regarding a risk to plant health, consultations regarding the situation shall, on request, take place without undue delay. Each Party shall endeavour in such situations, to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution consistent with the protection of plant health.
- 2. Upon request of a Party, consultations referred to in paragraph 1 shall be held. The requesting Party shall ensure the preparation of the minutes of the consultation, which shall be formally approved by the Parties.]

*Article 16*

**Emergency measures and Emergency actions**

[EU:

- 1. The importing Party may, on serious plant health grounds, take emergency measures necessary for the protection of plant health. For consignments in transport between the Parties, the importing Party shall consider the least trade restrictive measures in order to avoid unnecessary disruptions to trade.

2. The Party taking the measures shall notify the other Party thereof without undue delay of the decision to implement them. Upon request of either Party and in accordance with the provisions of Article 15, the Parties shall hold consultations regarding the situation without undue delay. The Parties shall take due account of any information provided through such consultations and shall endeavour to avoid unnecessary disruption to trade, taking into account, where applicable, the outcome of the provisions of Article 15.]

*Article 17*  
**Outstanding issues**

*Article 18*  
**Joint Management Committee [C: on Plant Issues]**

1. [C: The Parties hereby establish a Plant JMC led by representatives of each party from the relevant regulatory authorities who have responsibility for matters relating to the Agreement.]
2. The Joint Management Committee [C: on Plants], hereafter called the [C: Plant JMC] [EU: Committee, established in Article XXX of the CETA Agreement] shall meet within the first year, after the entry into force of this Agreement, and on request of either Party thereafter, not exceeding however a frequency in principle of one meeting a year. If agreed by the Parties, a meeting of the Committee may be held by video or audio-conference. The Committee may also address issues out of session, by correspondence.
2. The Committee shall:
  - (a) *monitor the implementation of this Agreement and consider any matter relating to this Agreement, and examine all matters which may arise in relation to its implementation;*
  - (b) *review the Appendices to this Agreement, notably in the light of progress made under the consultations and procedures provided for under this Agreement;*
  - (c) *[EU: modify by means of a decision, Appendices I to XII in light of the review provided for in paragraph (b) or as provided in this Agreement,]*
  - d) *[EU: make recommendations for modifications to this Agreement in light of the review provided for in paragraph (b) or any agreement on measures related to paragraph (a)].*
- [C: e) *consider pursuing the design, implementation and review of technical, scientific, and institutional cooperation programs]*

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[C: f) Refer issues to the CETA SPS Committee for consideration/resolution;]

[C: g) Consider issues referred to it by the CETA SPS Committee and report back to that committee on considerations/resolution;]

3. The [EU: Parties] [C: Plant JMC] agree to establish technical working groups, when appropriate, consisting of expert-level representatives of the Parties, which shall identify and address technical and scientific issues arising from the application of this Agreement. When additional expertise is required, the Parties may establish *ad hoc* groups, including scientific groups. Membership of such *ad hoc* groups need not be restricted to representatives of the Parties.

1. The [EU: Committee] [C: Plant JMC] shall report to the [C: Competent authorities] [EU: Oversight Body] established under the CETA.

5. The Committee shall adopt at its first meeting its working procedures.

[EU: Article 19  
Territorial application

This Agreement shall apply, on the one hand, as regards plants and plant products and other goods to the territories of Member States of the EU, as laid down in Appendix XI and, on the other hand to the territory of Canada.]

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*Appendix I*

**COMPETENT AUTHORITIES**

**A. Competent authorities of the EU**

Control is shared between the National Plant Protection Organizations of the Member States and the European Commission. In this respect the following applies:

- As regards exports to Canada, the Member States are responsible for the control of the production circumstances and requirements, including statutory inspections and issuing plant health certificates attesting to the agreed standards and requirements.
- As regards imports from Canada, the Member States are responsible for the control of the compliance of the imports with the EU's import conditions.
- The European Commission is responsible for overall co-ordination, inspection/audits of inspection systems and the necessary legislative action to ensure uniform application of standards and requirements within the Internal European Market.

**B. Competent authority of Canada**

The competent authority of Canada is the National Plant Protection Organization of Canada.

**LIMITE**

**[EU: *Appendix II***  
**GUIDELINES FOR CONDUCTING AUDITS]**

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[EU: *Appendix III*

**IMPORT CHECKS AND INSPECTION FEES**

**A      Frequencies of checks]**

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**LIMITE**



*Appendix IV*

**CERTIFICATION**

**Official languages for certification**

**Import into the EU**

**Plants and plant products:**

The certificate must be drawn up in one of the official languages of the EU and preferably in one of the official languages of the Member State of destination.

**Import into Canada**

The phytosanitary certificate must be drawn up in one of the official languages of Canada.

**LIMITE**

[EU: *Appendix V*

**TERRITORIAL APPLICATION**

For the EU:

The territories of Member States of the EU as laid down in EU legislation.

For Canada]

## TRADE REMEDIES

### SECTION X: ANTI-DUMPING AND COUNTERVAILING MEASURES

#### Article 1: General Provisions

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.
2. The provisions of this Section shall not be subject to the Dispute Settlement provisions of this Agreement
3. The provisions of this Section shall not be subject to the provisions of Chapter XX: Preferential Rules of Origin.

#### Article 2: Transparency

1. Each Party shall apply anti-dumping and countervailing measures in accordance with the relevant WTO requirements and pursuant to a fair and transparent process.
2. A Party shall ensure, after any imposition of provisional measures and, in any case, before a final determination is made, full and meaningful disclosure of all essential facts under consideration which form the basis for the decision whether to apply final measures. This is without prejudice to Article 6.5 of the WTO Agreement on Implementation of Article VI of GATT 1994 and Article 12.4 of the WTO Agreement on Subsidies and Countervailing Measures.
3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party in an anti-dumping or countervailing investigation<sup>6</sup> shall be granted a full opportunity to defend its interests.

#### Article 3: Consideration of Public Interest and Lesser Duty

1. The authorities shall consider information provided in accordance with their domestic law as to whether imposing an anti-dumping or countervailing duty would not be in the public interest.
2. After considering this information, the authorities may consider whether the amount of the anti-dumping or countervailing duty to be imposed shall be the full margin of

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<sup>6</sup> For the purpose of this article interested parties shall be defined as per Article 6(11) of the WTO Agreement on Implementation of Article VI of GATT 1994 and Article 12.9 of the WTO Agreement on Subsidies and Countervailing Measures.

dumping or amount of subsidy or a lesser amount, in accordance with the domestic law of the Party.

**SECTION XX: GLOBAL SAFEGUARD MEASURES**

**Article 1: General provisions**

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards, [EC: and Article 5 of the WTO Agreement on Agriculture].
2. The provisions of this Section shall not be subject to the Dispute Settlement provisions of this Agreement.
3. The provisions of this Section shall not be subject to the provisions of Chapter XX: Preferential Rules of Origin.

**Article 2: Transparency**

1. At the request of the exporting Party, the Party initiating a safeguard investigation or intending to adopt provisional or definitive safeguard measures shall immediately provide:
  - a. the information referred to in Article 12.2 of the WTO Agreement on Safeguards, in the format prescribed by the WTO Committee on Safeguards;
  - b. the public version of the complaint filed by the domestic industry, where relevant; and;
  - c. a public report setting forth the findings and reasoned conclusions on all pertinent issues of fact and law considered in the safeguard investigation. The public report shall include an analysis that attributes injury to the factors causing it and set out the method used in defining the safeguard measures.
2. When information is provided under this Article, the importing Party shall offer to hold informal consultations with the exporting Party in order to review the information provided.

**Article 3: Imposition of definitive measures**

1. A Party adopting safeguard measures shall endeavour to impose them in a way that least affects bilateral trade.

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2. The importing Party shall offer to hold informal consultations with the exporting Party in order to review the matter referred to in paragraph 1. The importing Party shall not adopt measures until 30 days have elapsed since the date the offer to consult was made.

**[Section XX: Bilateral Safeguard Clause]**

## SUBSIDIES

[EU:

### Article x1 Definition and scope

1. For the purposes of this Agreement, a subsidy is a measure which fulfils the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures (ASCM), irrespective whether it is granted in relation to the production of goods or the supply of services.
2. A subsidy shall be subject to this chapter only if such a subsidy is specific within the meaning of Article 2 ASCM. Any subsidy falling under the provisions of Article x3 shall be deemed to be specific
3. Article x 3, x 4 and x 8 of this [Chapter] shall not apply to fisheries subsidies, subsidies related to products covered by Annex 1 of the WTO Agreement on Agriculture and other subsidies covered by the WTO Agreement on Agriculture.

### Article x2 Principles

The Parties acknowledge that subsidies have the potential to distort competition and the proper functioning of markets and undermine the benefits of trade liberalisation.

### Article x3 Prohibited subsidies

1. The following subsidies related to trade in goods shall also be prohibited:
  - (a) Any legal arrangement whereby a government or any public body is responsible to cover debts or liabilities of certain undertakings without any limitation, in law or in fact, as to the amount of those debts and liabilities or the duration of such responsibility;
  - (b) Support to insolvent or ailing undertakings in whatever form (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, tax exemptions) without a credible restructuring plan based on realistic assumptions with the view to ensuring the return of the ailing undertaking within a reasonable time to long-term viability and without the undertaking significantly contributing itself to the costs of restructuring<sup>7</sup>

<sup>7</sup> This does not prevent the Parties from providing temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to merely to keep an ailing firm in business for the time necessary to work out a restructuring or liquidation plan.

unless the subsidizing Party upon request of the other Party has demonstrated that the subsidy in question does not affect trade of the other Party nor will be likely to do so.

Subparagraph b) above does not apply to subsidies granted as compensation for carrying out public service obligations and subsidies to the coal industry.

**Article x4<sup>8</sup>**  
**Other Subsidies**

If a Party has reason to believe that a subsidy granted by the other Party which is not covered by Article x3 of this Chapter is adversely affecting, or may adversely affect the first Party's interests, the first Party may express its concern to the other Party and request consultations on the matter. The other Party shall accord full and sympathetic consideration to such a request. The consultation should in particular aim at specifying whether the subsidy was only granted to achieve a legitimate objective of public interest, the amount of the subsidy in question is limited to the minimum needed to achieve this objective and the distortive effect on trade of the Other Party is limited.

In order to facilitate the consultation, the other Party shall provide information on the subsidy in question within no more than 60 days from the date of reception of the request. On the basis of the consultation, the requested Party will use its best endeavours to eliminate or minimise the adverse effects on the first Party's trade interests caused by the subsidy in question

**Article x5**  
**Transparency**

1. Each Party shall ensure transparency in the area of subsidies.
- 2.. With regard to subsidies related to trade in goods, each Party shall report every two years to the other Party on the legal basis, form, amount or budget and where possible the recipient of the subsidy granted by its government or any public body. Such report is deemed to have been provided if the relevant information is made available by the Parties or on their behalf on a publicly accessible website, by 31 December of the subsequent calendar year.

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<sup>8</sup> Article x4 subparagraph 1 shall not be subject to Dispute Settlement under this Agreement

3. With regard to subsidies related to the supply of services, each Party will provide full information on specific subsidies at the request of the other party within no more than 60 days from the date of reception of the request.

**Article x6**  
**Confidentiality**

When exchanging information under this [Chapter] the Parties shall take into account the limitations imposed by the requirements of professional and business secrecy.

**Article x7**  
**Relationship with the WTO**

The provisions in this [Chapter] are without prejudice to the rights and obligations of a Party under the WTO Agreement, in particular to apply trade remedies or to engage in dispute settlement proceedings or other appropriate action against a subsidy granted by the other Party.

**Article x8**  
**Review clause**

The Parties shall keep under constant review the matters to which reference is made in this [Chapter]. Each Party may refer such matters to the [Name of the relevant Committee]. The Parties agree to hold a first dialogue within two years after the entry into force of this Agreement with a view to developing rules applicable to other subsidies, taking into account developments at multilateral level.



Annex x

**Principles applicable to other subsidies**

1. In principle, other subsidies related to trade in goods and the supply of services, which are not covered by Article 3 of this Chapter, should not be granted by a Party when they affect, or are likely to affect, the trade of either Party.
2. Notwithstanding the principle reflected in paragraph 1 the following subsidies could be granted by a Party when they are necessary to achieve an objective of public interest; the amounts of the subsidy involved are limited to the minimum needed to achieve this objective and their effect on trade of the other Party is limited:
  - (a) subsidies having a social character, granted to individual consumers, provided that such subsidies are granted without discrimination related to the origin of the products concerned;
  - (b) subsidies to make good the damage caused by natural disasters or exceptional occurrences;
  - (c) subsidies to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
  - (d) subsidies to remedy a serious disturbance in the economy of one of the Parties;
  - (e) subsidies to facilitate the development of certain economic activities or of certain economic areas, where such aid does not affect conditions of trade of either Party and competition between the Parties<sup>9</sup>;
  - (f) subsidies to companies entrusted with the operation of clearly defined services of general economic interest, provided the subsidies are limited to the costs of providing such services;
  - (g) subsidies to promote culture and heritage conservation where these subsidies do not affect conditions of trade of either Party and competition between the Parties. ]

[CA: NO AGREEMENT TO EU PROPOSED TEXT FOR THIS CHAPTER]

<sup>9</sup> Note that this category may include but is not limited to, subsidies for clearly defined research, development and innovation purposes, subsidies for training or for the creation of employment, subsidies for environmental purposes, subsidies in favour of small and medium-sized companies, defined as companies employing less than 250 persons.

## INVESTMENT / ESTABLISHMENT

### Article X.1: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party [relating to] CAN [affecting] EU:

(a) investors of the other Party;  
(b) covered investments [and  
(c) with respect to Articles X.8 (Performance Requirements), X.12 (Health, Safety and Environmental Measures) and X.13 (Corporate Social Responsibility), all investments in the territory of the Party.] CAN [in all economic activities with the exception of:

(a) mining, manufacturing and processing<sup>10</sup> of nuclear materials;  
(b) production of or trade in arms, munitions and war material;  
(c) audio-visual services;  
(d) national maritime cabotage<sup>11</sup>, and;  
(e) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:  
(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;  
(ii) the selling and marketing of air transport services;  
(iii) computer reservation system (CRS) services;  
(iv) groundhandling services  
(v) airport operation services

2. Nothing in this Chapter shall be construed to require the privatisation of public undertakings or to impose any obligation with respect to government procurement.

3. The provisions of this Chapter shall not apply to subsidies granted or grants provided by a Party, including government-supported loans, guarantees, and insurance.] EU

### [Article X.2: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to the provision of that cross-border service. This Chapter shall apply to

<sup>10</sup> For greater certainty, processing of nuclear materials includes all the activities contained in UN ISIC Rev.3.1 code 2330.

<sup>11</sup> Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this chapter covers transportation of passengers or goods between a port or point located in Canada or a Member State of the Community and another port or point located in Canada or Member State of the Community, including on its continental shelf, as provided in the UN Convention on the Law on the Sea and traffic originating and terminating in the same port or point located in Canada or Member State of the Community.

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measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter [XY] (Financial Services).

4. Article [X.07] (Cross-Border Trade in Services – Domestic Regulation) is hereby incorporated into and made a part of this Chapter and applies to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment.<sup>12</sup>] CAN

### [Article X.3: Market Access

1. Neither Party shall adopt or maintain, either on the basis of its entire territory or on the basis of the territory of [a sub-national government] CAN, measures that:

(a) impose limitations on:

(i) the number of [covered investments,] CAN whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test [<sup>13</sup>] EU;

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;

(v) the total number of natural persons that may be employed [in a particular sector] or that a covered investment may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

(b) restrict or require specific types of legal entity or joint venture through which an investor may perform an economic activity.] EU

### [Article X.4: National Treatment

<sup>12</sup> It is understood by the Parties that any reservation taken by a Party pursuant to Article [X.05] (Cross-Border Trade in Services – Reservations) against Article [X.04] (Cross-Border Trade in Services – Market Access) applies to measures of that Party covered under Paragraph 4.

<sup>13</sup> Subparagraphs 1(a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural product.

1. Each Party shall accord to investors of the other Party and [CAN/EU: covered investments] treatment no less favourable than that it accords [, in like circumstances,] CAN to its own [like] EU investors [and investments] EU [with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory] CAN

[2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.] CAN

2. The treatment accorded by a Party under paragraph[s] CAN 1 [and 2] CAN means, with respect to a [regional/provincial or local/municipal] EU [sub-national] CAN government, treatment no less favourable than the most favourable treatment accorded [, in like circumstances,] CAN by that [regional/provincial or local/municipal] EU [sub-national] CAN government to [its own like establishments and] EU investors, [and to investments of investors, of the Party of which it forms a part] CAN [or to those of other provinces or municipalities, whichever is the more favourable] EU.

[3. A Party may meet the requirement of paragraph 1 and 2 by according to establishments and investors of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like establishments and investors.

4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of establishments and investors of the Party compared to like establishments and investors of the other Party.

5. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant investors.] EU

*Comments: Articles 3 to 5 proposed by the EU to be included in the understanding on national treatment*

#### Article X.5 Most-Favoured Nation Treatment<sup>[14]</sup> EU

1. Each Party shall accord to [establishments and] EU investors of the other Party [a] EU treatment no less favourable than that it accords; [in like circumstances,] CAN to [like establishments and] EU investors [of major trading economy in the context of an economic integration agreement<sup>15</sup>] EU [of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory] CAN.

<sup>14</sup> Nothing in this Article shall be interpreted as extending the scope and coverage of this Section.

<sup>15</sup> The obligation contained in paragraph 1 does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-state dispute settlement procedures.

[2] CAN [1] EU. [With respect to any measures covered by this Section affecting establishment, unless otherwise provided for in paragraphs 2 and 4,] EU each Party shall accord to [establishments and investors of the other Party a] EU [covered investments] CAN treatment no less favourable than that it accords, [in like circumstances,] CAN to [like establishments and investors] EU [investments of investors] CAN of [major trading economy in the context of an economic integration agreement<sup>16</sup>] EU [a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory] CAN.

[3. For greater certainty, the treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.] CAN

[2. Paragraph 1 shall not apply to economic integration agreements that create an internal market in services and establishment, and to which a Party is a signatory.

3. The obligations set by paragraph 1 of this provision shall not apply to treatment granted:

- (a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in services or its Annex on Financial Services,
- (b) under any international agreement or arrangement relating wholly or mainly to taxation.

4. For the purpose of this provision, a "major trading economy" means any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1.<sup>17</sup>] EU

#### [Article X.6: Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.

<sup>16</sup> The obligation contained in paragraph 1 does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-state dispute settlement procedures.

<sup>17</sup> For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.] CAN

**[Article X.7: Compensation for Losses**

Notwithstanding paragraph 4(b) of Article X.14 (Reservations and Exceptions), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to compensation for losses suffered by investments in its territory owing to armed conflict, civil strife or a natural disaster.] CAN

**Article X.8: Senior Management and Boards of Directors**

1. Neither Party may require that an [enterprise] CAN of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality [or require prior residency in the territory of that party] EU.

[2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment be of a particular nationality or be resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.] CAN

**[Article X.9: Performance Requirements**

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory to:

- (a) export a given level or percentage of goods or services;
- (b) achieve a given level or percentage of domestic content;
- (c) purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
- (d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) transfer technology, a production process or other proprietary knowledge to a person in its territory; or

(g) supply exclusively from the territory of the Party the goods that such investment produces or the services it provides to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles X.03 (National Treatment) and X.04 (Most-Favoured-Nation Treatment) apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
- (d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. (a) Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Subparagraph 1(f) does not apply when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement.

5. Paragraphs 1 and 3 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

6. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties.

7. The provisions of:

- (a) subparagraphs 1(a), (b) and (c), and 3(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
- (b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b), do not apply to procurement by a Party or a state enterprise; and

- (c) subparagraphs 3(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.] CAN

**[Article X.9: Expropriation]**

1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation"), except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of compensation in accordance with paragraphs 2 and 3. For greater certainty, this paragraph shall be interpreted in accordance with Annex X.9.1 on the clarification of indirect expropriation.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment.
4. The affected investor shall have a right under the law of the expropriating Party to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.

This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreement.

**Annex X.9.1 Indirect Expropriation**

The Parties confirm their shared understanding that:

1. Indirect expropriation results from a measure or series of measures of a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.



2. The determination of whether a measure or series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

- (a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;
- (b) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and
- (c) the character of the measure or series of measures.

3. Except in rare circumstances, such as when a measure or series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures by a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations.] CAN

## **[[CHAPTER 8] PAYMENTS AND CAPITAL MOVEMENTS**

### **ARTICLE 8.1: CURRENT PAYMENTS**

The Parties undertake to impose no restrictions and to allow all payments and transfers on the current account of balance of payments between residents of the Parties to be made in freely convertible currency and in accordance with the Articles of the Agreement of the International Monetary Fund.] EU

### **[ARTICLE 8.2: CAPITAL MOVEMENTS] EU [Article X.10: Transfers] CAN**

1. [With regard to transactions on the capital and financial account of balance of payments,] EU [Each Party shall permit all transfers] CAN [the Parties undertake to impose no restrictions on the free movement of capital] EU relating to [a covered investment] CAN [direct investments] EU [to be] CAN made [freely, and without delay, into and out of its territory. Such transfers include:

- (a) contributions to capital;
  - (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the covered investment;
  - (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
  - (d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;
  - (e) payments made pursuant to Articles X.6 (Compensation for Losses) and X.9 (Expropriation); and
  - (f) payments arising under Section B.] CAN
- [in accordance with the laws of the host country, to investments and other transactions liberalised in accordance with Chapter [7] (Trade in Services, Establishment and E-

## LIMITE

commerce) of this Agreement, and to the liquidation and repatriation of these invested capitals and of any profit generated therefrom.] EU

[2. Each Party shall permit transfers relating to a covered investment to be made in the convertible currency in which the capital was originally invested, or in any other convertible currency agreed to by the investor and the Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the market rate of exchange applicable on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offences;
- (d) reports of transfers of currency or other monetary instruments; or
- (e) ensuring the satisfaction of judgments in adjudicatory proceedings.

4. Neither Party may require its investors to transfer, or penalize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

5. Paragraph 4 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters in subparagraphs 3(a) through 3(e).

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under the WTO Agreement.

[NOTE: If the FTA does not include a Transparency Chapter, an article on transparency will be proposed as Article 11 of the Investment Chapter with its necessary exceptions.] ]  
CAN

[2. Without prejudice to other provisions in this Agreement, the Community and its Member States, within the scope of their respective competences, and Canada recall their international commitments with regard to investment, and especially the OECD Codes of Liberalisation and OECD National Treatment Instrument.

3. Without prejudice to other provisions in this Agreement, the Parties shall not introduce any new restrictions on the movement of capital and current payments between residents of the Parties and shall not make the existing arrangements more restrictive.

4. The Parties may hold consultations with a view to further facilitating the movement of capital between them in order to promote the objectives of this Agreement.

## ARTICLE 8.3: SAFEGUARD MEASURES

1. Where, in exceptional circumstances, capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in Canada or one or more Member States, safeguard measures with regard to capital movements that are strictly necessary may be taken by the Party concerned<sup>18</sup> for a period not exceeding six months.

2. The [Trade Committee] shall be informed forthwith of the adoption of any safeguard measure and, as soon as possible, of a time schedule for its removal.] EU

**[Article X.11: Subrogation]**

1. If a Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of the Party or agency to any right or title held by the investor.

2. A Party or any agency thereof, which is subrogated to the rights of an investor in accordance with paragraph 1, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. Such rights may be exercised by the Party or any agency thereof, or by the investor if the Party or any agency thereof so authorizes.] CAN

**Article X.12: [Health, Safety and Environmental Measures] CAN [Maintaining Levels of Protection] EU**

The Parties recognise that it is inappropriate to encourage [investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor.] CAN [the establishment, acquisition, expansion or retention in their territories of an investment or an investor by lowering the levels of protection enshrined in domestic environmental and labour (including occupational health and safety) legislation and standards, or by relaxing laws aimed at protecting and promoting cultural diversity.] EU If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.] CAN

**Article X.13: Corporate Social Responsibility**

Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognised standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Parties, notably the OECD Guidelines for Multinational Enterprises. These principles address issues such as labour, the environment, human rights, community relations and anti-corruption. The Parties

<sup>18</sup> The Community or its Member States or Canada.

remind those enterprises of the importance of incorporating such corporate social responsibility standards in their practices and internal policies.

**[Article X.14: Reservations and Exceptions**

1. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.7 (Senior Management and Boards of Directors) and X.8 (Performance Requirements) do not apply to:

- (a) any existing non-conforming measure that is maintained by:
  - (i) the national level of government, as set out by that Party in its Schedule to Annex I,
  - (ii) a [sub-national] level of government, as set out by that Party in its Schedule to Annex I, or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.7 (Senior Management and Board of Directors) and X.8 (Performance Requirements).

2. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.7 (Senior Management and Board of Directors) and X.8 (Performance Requirements) do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.]

[3. In respect of intellectual property rights, a Party may derogate from Article X.3 (National Treatment), Article X.4 (Most-Favoured-Nation Treatment) and subparagraph 1(f) of Article X.8 (Performance Requirements) in a manner that is consistent with the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

4. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment) and X.7 (Senior Management and Board of Directors) do not apply to:

- (a) procurement by a Party or a state enterprise; or
- (b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.] CAN

**[SECTION 7- EXCEPTIONS**

**ARTICLE 50: GENERAL EXCEPTIONS**

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where

like conditions prevail, or a disguised restriction on establishment or cross-border supply of

services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order<sup>19</sup>;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;
- (f) inconsistent with Articles 7.6 and 7.12 on National Treatment, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or services suppliers of the other Party<sup>20</sup>.

#### **ARTICLE 51: SECURITY EXCEPTIONS**

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) connected with the production of or trade in arms, munitions and war materials and related to traffic in other goods and materials and to economic activities carried out directly or indirectly for the purpose of supplying a military establishment;

<sup>19</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

<sup>20</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident investors and services suppliers in recognition of the fact that the tax obligation of nonresidents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

- (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
- (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security. [provisions of this article might have to be changed or moved depending on whether there is horizontal security exception] JEU

**[Article X.15: Special Formalities and Information Requirements]**

1. Nothing in Article X.3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of covered investments, such as a requirement that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles X.3 (National Treatment) and X.4 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party, or its covered investment, to provide information concerning that investment solely for informational or statistical purposes, provided that such requests are reasonable and not unduly burdensome. The Party shall protect any confidential information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.] CAN

**[Article X.16: Denial of Benefits]**

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:
- a) investors of a non-Party own or control the enterprise; and
  - b) the denying Party adopts or maintains measures with respect to the non-Party that:
    - i. are related to maintenance of international peace and security or the protection of human rights.
    - ii. prohibit transactions with the enterprise or would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if investors of a non-Party or of the denying Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.] CAN

[Should the juridical person have only its registered office or central administration in the territory of the European Union or of Canada respectively, it shall not be considered as a European Union or Canadian juridical person respectively, unless it engages in substantive business operations<sup>21</sup> in the territory of the European Union or of Canada, respectively;] EU

#### [ARTICLE 15: OTHER AGREEMENTS

Nothing in this Section shall be taken:

- (a) to limit the rights of the Parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Union and Canada are Parties; and
- (b) to derogate from the international legal obligations of the Parties under those agreements that provide investors of the Parties with more favourable treatment than that provided for under this Agreement.] EU

#### DEFINITIONS

<b>'person'</b> means either a natural person or a juridical person	<b>person</b> means a natural person or an enterprise;
<b>'natural person'</b> means a national of Canada or one of the Member States of the European Union according to their respective legislation;	<b>person of a Party</b> means a national, or an enterprise of a Party;
<b>'juridical person'</b> means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or	<b>enterprise</b> means an entity constituted or organized under applicable law, whether or not for profit, and whether privately owned and controlled or governmentally owned and controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or other association;

<sup>21</sup> The EC understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 48 of the EC Treaty is equivalent to the concept of "substantive business operations". Accordingly, for a juridical person set up in accordance with the laws of Canada and having only its registered office or central administration in the territory of Canada, the EC shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous economic link with the economy of Canada.

<p>association</p>	<p><i>Chapter X: Investment, Section C: Definitions</i> <i>Article X.35: Definitions</i></p> <p><b>enterprise</b> means an enterprise as defined in Article [X.01] (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity;</p>
<p>a ‘European Union juridical person’ or a ‘Canadian juridical person’ means:</p> <ul style="list-style-type: none"> <li>i. a juridical person set up in accordance with the laws of a Member State of the European Union or of Canada respectively, and having its registered office, central administration,<sup>22</sup> or <b>principal place of business in the territory of the European Union or Canada</b>, respectively;</li> <li>or</li> <li>ii. in the case of the supply of a service through establishment, a juridical person owned or controlled by natural persons of one of the Member States of the European Union or of Canada respectively or by European Union juridical persons or Canadian juridical persons respectively.</li> </ul> <p>Should the juridical person have only its registered office or central administration in the territory of the European Union or of Canada respectively, it shall not be considered as a European Union or Canadian juridical person respectively, unless it engages in substantive business operations<sup>23</sup> in</p>	<p><b>enterprise</b> means an entity constituted or organized under applicable law, whether or not for profit, and whether privately owned and controlled or governmentally owned and controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or other association;</p> <p><i>Chapter X: Investment, Section C: Definitions</i> <i>Article X.35: Definitions</i></p> <p><b>enterprise</b> means an enterprise as defined in Article [X.01] (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity;</p>

<sup>22</sup> Central administration means the head office where ultimate decision making takes place.

<sup>23</sup> The EC understands that the concept of “effective and continuous link” with the economy of a Member State enshrined in Article 48 of the EC Treaty is equivalent to the concept of “substantive business operations”. Accordingly, for a juridical person set up in



<p>the territory of the European Union or of Canada, respectively;</p> <p>A juridical person is:</p> <p>(i) "owned" by natural or juridical persons of one of the Member States of the European Union or of Canada if more than 50 per cent equity interest in it is beneficially owned by persons of that/a Member State of the European Union or of Canada respectively; and</p> <p>(ii) "controlled" by natural or juridical persons of one of the Member States of the European Union or of Canada if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;</p> <p>(iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person.</p>	
<p>Notwithstanding the preceding paragraph, shipping companies established outside the European Union or Canada and controlled by nationals of a Member State of the European Union or of Canada, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation in that Member State or in Canada and carry the flag of a Member State or Canada.</p>	
<p><b>'economic integration agreement'</b> means an agreement substantially liberalising trade in services and</p>	

accordance with the laws of Canada and having only its registered office or central administration in the territory of Canada, the EC shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous link with the economy of Canada.

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establishment pursuant to WTO rules.	
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<p><b>'establishment' means:</b></p> <ul style="list-style-type: none"> <li>(i) the constitution, acquisition or maintenance of a juridical person<sup>24</sup>, or</li> <li>(ii) the creation or maintenance of a branch or representative office</li> </ul> <p>within the territory of a Party for the purpose of performing an economic activity;</p>	<p><b>investment means:</b></p> <ul style="list-style-type: none"> <li>(a) an enterprise;</li> <li>(b) shares, stocks and other forms of equity participation in an enterprise;</li> <li>(c) bonds, debentures and other debt instruments of an enterprise;</li> <li>(d) a loan to an enterprise;</li> <li>(e) an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise;</li> <li>(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;</li> <li>(g) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under: <ul style="list-style-type: none"> <li>i. contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or</li> <li>ii. contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;</li> </ul> </li> <li>(h) intellectual property rights; and</li> <li>(i) any other tangible or intangible, moveable or immovable, property and related property rights acquired in the expectation of or used for the purpose of economic benefit or other business purpose;</li> </ul> <p>but <b>investment does not mean,</b></p> <ul style="list-style-type: none"> <li>(j) claims to money arising solely from: <ul style="list-style-type: none"> <li>i. commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the</li> </ul> </li> </ul>
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<sup>24</sup> The terms "constitution" and "acquisition" of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

	<p>territory of the other Party, or</p> <p>ii. the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or</p> <p>(k) any other claims to money,</p> <p>that do not involve the kinds of interests set out in subparagraphs (a) to (i);</p>
	<p><b>covered investment</b> means, with respect to a Party, an investment in its territory of an investor of the other Party on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;</p>
	<p><b>investment of an investor of a Party</b> means an investment owned or controlled directly or indirectly by an investor of such Party;</p>
<p><b>'investor'</b> of a Party means any person that seeks to perform or performs an economic activity through setting up an establishment<sup>25</sup>;</p>	<p><b>investor of a Party</b> means a Party, or a national or an enterprise of a Party, that seeks to make, is making or has made an investment;</p>
	<p><b>national</b> means a natural person who is a citizen according to Article X.07, or is a permanent resident of a Party.</p> <p><b>national</b> means:</p> <p>(a) in the case of Canada, a natural person who is a citizen or permanent resident of Canada, and</p> <p>(b) in the case of ...</p> <p>except that:</p> <p>a natural person who is a dual citizen of</p>

<sup>25</sup> Where the economic activity is not performed directly by a juridical person but through other forms of establishment such as a branch or a representative office, the investor (i.e. the juridical person) shall, nonetheless, through such establishment be accorded the treatment provided for investors under the Agreement. Such treatment shall be extended to the establishment through which the economic activity is performed and need not be extended to any other parts of the investor located outside the territory where the economic activity is performed.

	<p>Canada and _____ shall be deemed to be exclusively a national of the Party of his or her dominant and effective nationality; and</p> <p>a natural person who is a citizen of one Party and a permanent resident of the other Party shall be deemed to be exclusively a national of the Party of his or her citizenship;</p>
<p><b>'economic activity'</b> includes any activities of an economic nature except activities carried out in the exercise of governmental authority, i.e. activities carried out neither on a commercial basis nor in competition with one or more economic operators.</p>	
<p><b>'subsidiary'</b> of a juridical person of a Party means a juridical person which is effectively controlled by another juridical person of that Party;</p>	
<p><b>'branch'</b> of a juridical person means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that such third parties, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.</p>	
	<p><b>confidential information</b> means confidential business information and information that is privileged or otherwise protected from disclosure under the law of a Party;</p>
	<p><b>disputing party</b> means either the respondent Party or the investor that has made a claim under Section B;</p>
	<p><b>ICSID</b> means the International Centre for Settlement of Investment Disputes</p>

	established by the ICSID Convention;
	<b>ICSID Convention</b> means the <i>Convention on the Settlement of Investment Disputes between States and Nationals of Other States</i> , done at Washington on 18 March 1965;
	<b>intellectual property rights</b> means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights;
	<b>New York Convention</b> means the <i>United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards</i> , done at New York on 10 June 1958;
	<b>respondent Party</b> means a Party against which a claim is made under Section B;
	<b>Tribunal</b> means an arbitration tribunal established under Article X.20 (Submission of a Claim to Arbitration) or X.24 (Consolidation); and
	<b>UNCITRAL Arbitration Rules</b> means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

**[Section B – Settlement of Disputes between an Investor and the Host Party]**

**Article X.17: Purpose**

Without prejudice to the rights and obligations of the Parties under Chapter [XY] (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes.

*1) Article X.18: Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise*

1. An investor of a Party may submit to arbitration under this Section a claim that the respondent Party has breached:

- (a) an obligation under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements); or
- (b) an obligation under Article [X.02(3)(a)] (Competition Policy, Monopolies and State Enterprises – Monopolies) or [X.03(2)] (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements),

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

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2. An investor of a Party, on behalf of an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the respondent Party has breached:

- (a) an obligation under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements); or
- (b) an obligation under Article [X.02(3)(a)] (Competition Policy, Monopolies and State Enterprises – Monopolies) or [X.03(2)] (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements),

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

3. An investor of a Party cannot submit or continue to pursue a claim under this Section where:

- (a) the investor is also a national of a non-Party and submits or has submitted a claim with respect to the same measure or series of measures under any agreement between the respondent Party and that non-Party; or
- (b) the investment of the investor in the territory of the respondent Party is held indirectly through an investor of a non-Party, and the investor of the non-Party submits or has submitted a claim with respect to the same measure or series of measures under any agreement between the respondent Party and that non-Party.

## ARTICLE III. ARTICLE X.19: CONDITIONS PRECEDENT TO SUBMISSION OF A CLAIM TO ARBITRATION

1. The disputing parties shall hold consultations in an attempt to resolve the issue amicably before an investor may submit a claim to arbitration. Consultations shall be held within 30 days of the submission of the notice of intent to submit a claim to arbitration under subparagraph 2(c), unless the disputing parties otherwise agree. The place of consultation shall be the capital of the respondent Party unless the disputing parties otherwise agree.



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2. An investor may submit a claim to arbitration under Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) only if:

- (a) the investor and, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the enterprise, consent to arbitration in accordance with the procedures set out in this Agreement;
- (b) at least six months have elapsed since the events giving rise to the claim;
- (c) the investor has delivered to the respondent Party a written notice of its intent to submit a claim to arbitration at least 90 days prior to submitting the claim, which notice shall specify:
  - (i) the name and address of the investor and, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the name and address of the enterprise,
  - (ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,
  - (iii) the legal and the factual basis for the claim, including the measures at issue, and
  - (iv) the relief sought and the approximate amount of damages claimed;
- (d) the investor has delivered evidence establishing that it is an investor of the other Party with its notice of intent to submit a claim to arbitration under subparagraph 2(c);

and

- (e) in the case of a claim submitted under paragraph 1 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise):
  - (i) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby, and
  - (ii) the investor and, where the claim is for loss or damage to an interest in an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise waive their right to initiate or continue before any

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administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article X.18, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the respondent Party;

- (f) in the case of a claim submitted under paragraph 2 of Article X.18 (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise):
  - (i) not more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and
  - (ii) both the investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article X.18, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the respondent Party.

3. A consent and waiver required under paragraph 2 shall be delivered to the respondent Party and shall be included in the submission of a claim to arbitration. A waiver from the enterprise under subparagraphs 2(e)(ii) or 2(f)(ii) shall not be required only if a respondent Party has deprived the investor of control of an enterprise.

## ARTICLE IV. ARTICLE X.20: SUBMISSION OF A CLAIM TO ARBITRATION

1. An investor that meets the conditions precedent in Article X.19 (Conditions Precedent to Submission of a Claim to Arbitration) may submit a claim to arbitration under:

- (a) the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent Party and the Party of the investor are parties to the ICSID Convention;

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- (b) the Additional Facility Rules of ICSID, provided that either the respondent Party or the Party of the investor, but not both, is a party to the ICSID Convention; or
  - (c) the UNCITRAL Arbitration Rules.
- 2. The Commission shall have the power to make rules supplementing the applicable arbitral rules and may amend any supplemental rules of its own making. Such rules shall be binding on a Tribunal established under this Section, and on individual arbitrators serving on such a Tribunal.
- 3. The arbitration rules applicable under paragraph 1 shall govern the arbitration, except to the extent modified by this Agreement and as supplemented by any rules adopted by the Commission under paragraph 2.
- 4. A claim is submitted to arbitration under this Section when:
  - (a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General of ICSID;
  - (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General of ICSID; or
  - (c) the notice of arbitration under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent Party.
- 5. Each Party shall notify the other Party by diplomatic note of the place of delivery of notices and other documents.
  - (a)
  - (b) **Article X.21: Consent to Arbitration**
- 1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Section. Failure to meet any of the conditions precedent in Article X.19 (Conditions Precedent to Submission of a Claim to Arbitration) shall nullify that consent.
- 2. The consent given in paragraph 1 and the submission by an investor of a claim to arbitration shall satisfy the requirement of:
  - (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
  - (b) Article II of the New York Convention for an agreement in writing.

Section 4.02

Section 4.03 ARTICLE X.22: ARBITRATORS

1. Except in respect of a Tribunal established under Article X.24 (Consolidation), and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.
2. Arbitrators shall have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international investment or international trade agreements. Arbitrators shall be independent of, and not be affiliated with or take instructions from, either disputing party.
3. If the disputing parties do not agree on the remuneration of the arbitrators before the constitution of the Tribunal, the prevailing ICSID rate for arbitrators shall apply.
4. If a Tribunal, other than a Tribunal established under Article X.24 (Consolidation), has not been constituted within 90 days after the date that a claim is submitted to arbitration, either disputing party may ask the Secretary-General of ICSID to appoint, in his or her discretion and, to the extent practicable, in consultation with the disputing parties, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall not be a national of either Party.

**Article X.23: Agreement to Appointment of Arbitrators**

1. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on paragraph 2 of Article X.22 (Arbitrators) or on a ground other than nationality:
  - (a) the respondent Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
  - (b) an investor referred to in paragraph 1 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor agrees in writing to the appointment of each member of the Tribunal; and

- (c) an investor referred to in paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

**Article X.24: Consolidation**

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.
2. Where a Tribunal established under this Article is satisfied that claims submitted to arbitration under Article X.20 (Submission of a Claim to Arbitration) have a question of law or fact in common, the Tribunal may, in the interest of fair and efficient resolution of the claims and after hearing the disputing parties, by order:
  - (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
  - (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.
3. A disputing party that seeks an order under paragraph 2 shall request that the Secretary-General of ICSID establish a Tribunal and shall specify in the request:
  - (a) the name of the respondent Party or investors against which the order is sought;
  - (b) the nature of the order sought; and
  - (c) the grounds on which the order is sought.
4. The disputing party shall deliver a copy of the request to the respondent Party or investors against which the order is sought.
5. Within 60 days of receipt of the request, the Secretary-General of ICSID shall establish a Tribunal comprising three arbitrators. The Secretary-General of ICSID shall appoint one member who is a national of the respondent Party, one member who is a national of the Party of the investors that submitted the claims, and a presiding arbitrator who is not a national of either Party.
6. Where a Tribunal has been established under this Article, an investor that has submitted a claim to arbitration under Article X.20 (Submission of a Claim to

## LIMITE

Arbitration) and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in any order made under paragraph 2, and shall specify in the request:

- (a) the name and address of the investor;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

7. An investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request under paragraph 3.

8. A Tribunal established under Article X.20 (Submission of a Claim to Arbitration) shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established or instructed under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article X.20 (Submission of a Claim to Arbitration) be stayed unless the latter Tribunal has already adjourned its proceedings.

### **Article X.25: Documents to, and Participation of, the Other Party**

1. The respondent Party shall deliver to the other Party to this Agreement a copy of the notice of intent to submit a claim to arbitration and other documents no later than 30 days after the date that such documents have been delivered to the respondent Party. The other Party shall be entitled, at its cost, to receive from the respondent Party a copy of the evidence that has been tendered to the Tribunal, copies of pleadings filed in the arbitration, and written argument of the disputing parties. The Party receiving such information shall treat the information as if it were a respondent Party.

2. The other Party shall have the right to attend any hearings held under this Section. Upon written notice to the disputing parties, the other Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

### **Article X.26: Place of Arbitration**

The disputing parties may agree on the place of arbitration under the arbitral rules applicable under paragraph 1 of Article X.20 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the Tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of either Party or of a non-Party that is a party to the New York Convention.

### **Article X.27: Public Access to Hearings and Documents**

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1. Any Tribunal award under this Section shall be publicly available, subject to the redaction of confidential information. All other documents submitted to, or issued by, the Tribunal shall be publicly available unless the disputing parties otherwise agree, subject to the redaction of confidential information.
2. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings *in camera* to the extent necessary to ensure the protection of confidential information.
3. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.
4. The Parties may share with officials of their respective national and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Chapter, but they shall ensure that those persons protect any confidential information in such documents.
5. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.
6. Nothing in this Section shall be construed to require a Party to furnish or allow access to information that it may withhold in accordance with Article [X.02] (Exceptions – National Security) or Article [X.05] (Exceptions – Disclosure of Information).

### **Article X.28: Submissions by a third party**

1. A Tribunal shall have the authority to consider and accept written submissions from a person or entity that is not a disputing party and that has a significant interest in the arbitration. The Tribunal shall ensure that any third-party submission does not disrupt the proceedings and does not unduly burden or unfairly prejudice either disputing party.
2. An application to the Tribunal for leave to file a third-party submission, and the filing of a submission if allowed by the Tribunal, shall be made in accordance with Annex X.28.

(a)

### **Article X.29: Governing Law**

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. An interpretation by the Commission of a provision of this Agreement shall be binding on a

## LIMITE

Tribunal established under this Section, and any award under this Section shall be consistent with such interpretation.

2. Where a respondent Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, on request of the respondent Party, the Tribunal shall request the interpretation of the Commission on the issue. Within 60 days of the delivery of the request, the Commission shall submit in writing its interpretation to the Tribunal. The interpretation shall be binding on the Tribunal. If the Commission fails to submit its interpretation within 60 days, the Tribunal shall decide the issue.

### **(b) Article X.30: Expert Reports**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, and unless both disputing parties disagree, a Tribunal may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may agree.

### **Article X.31: Interim Measures of Protection and Final Award**

1. A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise). For purposes of this paragraph, an order includes a recommendation.

2. Where a Tribunal makes a final award against the respondent Party, the Tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the respondent Party may pay monetary damages and any applicable interest in lieu of restitution.

The Tribunal may also award costs in accordance with the applicable arbitration rules.

3. Subject to paragraph 2, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Behalf of an Enterprise):



- (a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise;
  - (b) an award of restitution of property shall provide that restitution be made to the enterprise; and
  - (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.
- (c) 4. A Tribunal may not award punitive damages.

**Article X.32: Finality and Enforcement of an Award**

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of that particular case.
2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
3. A disputing party may not seek enforcement of a final award until:
  - (a) in the case of a final award made under the ICSID Convention:
    - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or
    - (ii) revision or annulment proceedings have been completed; and
  - (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
    - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
    - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.
4. Each Party shall provide for the enforcement of an award in its territory.
5. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

**Article X.33: Receipts under Insurance or Guarantee Contracts**  
**ARTICLE V.**

ARTICLE VI. IN AN ARBITRATION UNDER THIS SECTION, A RESPONDENT PARTY SHALL NOT ASSERT AS A DEFENCE, COUNTERCLAIM, RIGHT OF SETOFF, OR FOR ANY OTHER REASON THAT THE DISPUTING INVESTOR HAS RECEIVED OR WILL RECEIVE, PURSUANT TO AN INSURANCE OR GUARANTEE CONTRACT, INDEMNIFICATION OR OTHER COMPENSATION FOR ALL OR PART OF ITS ALLEGED DAMAGES.

**Article X.34: Exclusions**

The dispute settlement provisions of this Section and of Chapter [XY] (Dispute Settlement) do not apply to the matters referred to in Annex X.34 (Exclusions from Dispute Settlement).

**Annex X.28**

**Submissions by a third party**

1. The application for leave to file a third-party submission shall:
  - (a) be made in writing, dated and signed by the applicant, and include the applicant's address and other contact details;
  - (b) be no longer than five typed pages;
  - (c) describe the applicant, including, where relevant, its membership and legal status (e.g., company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);
  - (d) disclose whether the applicant has any affiliation, direct or indirect, with any disputing party;
  - (e) identify any government, person or organization that has provided any financial or other assistance in preparing the submission;
  - (f) demonstrate that the applicant has a significant interest and specify the nature of this interest in the arbitration;

- (g) identify the specific issues of fact or law in the arbitration that the applicant will address in its written submission;
  - (h) explain why the Tribunal should accept the submission; and
  - (i) be made in a language of the arbitration.
2. The submission filed by a third party shall:
- (a) be dated and signed by the person filing the submission;
  - (b) be concise, and in no case longer than 20 typed pages, including any appendices;
  - (c) set out a precise statement supporting the applicant's position on the issues; and
  - (d) only address matters within the scope of the dispute.

**Annex X-34.1**

**Exclusions from Dispute Settlement**

1. A decision by Canada following a review under the *Investment Canada Act*, with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter [XY] (Dispute Settlement).
2. A decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment, pursuant to Article [X.02] (Exceptions – National Security) shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter [XY] (Dispute Settlement). ] CAN

## CROSS-BORDER TRADE IN SERVICES

### Article X-01: Scope

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party, including measures affecting:

- (a) the production, distribution, marketing, sale and delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of, in connection with the supply of a service, services which are required to be offered to the public generally;
- [(d) the provision of a bond or other form of financial security as a condition for the supply of a service. ] CAN

2. This Chapter does not apply to:

- [(a) audio-visual services;
- (b) national maritime cabotage and,] EU
- [(c) financial services as defined in Chapter XX (Financial Services);] CAN
- (d)[domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights] EU [air services and related services in support of air services]CAN , other than
  - (i) aircraft repair and maintenance services when an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (CRS) services;
  - [(iv) groundhandling services
  - (v) airport operation services]EU
- (e) procurement by a Party [or a state enterprise]CAN or;
- (f) subsidies or grants provided by a Party [or a state enterprise]CAN, including government-supported loans, guarantees and insurance.

Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a [national/natural person] of the other Party seeking access to its employment

market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment.

**Article X-02: National Treatment**

1. [In the sectors where market access commitments are inscribed in Annex 7A (Lists of Commitments), and subject to any conditions and qualifications set out therein, in respect of all measures affecting the cross-border supply of services,] EU

Each Party shall accord to service suppliers and services of the other Party treatment no less favourable than that it accords [, in like circumstances,] CAN to its own [like] EU service suppliers and services.

2. The treatment accorded by a Party under paragraph 1 means, with respect to measures adopted or maintained by [a sub-national government] CAN, treatment no less favourable than the most favourable treatment accorded, [in like circumstances] CAN, by that [sub-national government] CAN to [its own like] EU service suppliers and services of the Party of which it forms a part.

[3. A Party may meet the requirement of paragraph 1 and 2 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to like services or service suppliers of the other Party.

5. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.]EU

**Article X-03: Most-Favoured-Nation Treatment**

[1. With respect to any measures affecting cross-border supply of services covered by this Chapter, unless otherwise provided for in paragraphs 2 and 4,]EU

Each Party shall accord to service suppliers and services of the other Party treatment no less favourable than that it accords [, in like circumstances,] CAN to [like] EU service suppliers and services of [a non-Party.] CAN

[of a major trading economy in the context of an economic integration agreement.

2. Paragraph 1 shall not apply to economic integration agreements that create an internal market in services, and to which a Party is a signatory.

3. The obligations set by paragraph 1 of this provision shall not apply to treatment granted:

- a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in Services or its Annex on Financial Services,
- b) under any international agreement or arrangement relating wholly or mainly to taxation, or
- c) under measures benefiting from the coverage of an MFN exemption listed in Annex 7A (Lists of Commitments)

4. For the purpose of this provision, a "major trading economy" means any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1.]EU

#### **Article X-04: Market Access**

[1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for in the specific commitments contained in Annex 7A (Lists of Commitments)..

2. In sectors where market access commitments are undertaken,]EU Neither Party may adopt or maintain, either on the basis of its entire territory or on the basis of the territory of [a sub-national government] CAN, measures that impose limitations on:

- (a) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
- (b) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

#### **[ARTICLE 7: LISTS OF COMMITMENTS**

1. The sectors liberalised by each of the Parties pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to services and services suppliers of the other Party in those sectors are set out in lists of commitments included in Annex 7A (Lists of Commitments).

2. Neither Party may adopt new, or more discriminatory measures with regard to services or services suppliers of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.]EU

**[Article X-05: Reservations**

1. Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access) do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

- (i) the national level of government, as set out by that Party in its Schedule to Annex I;
- (ii) a sub-national level of government, as set out by that Party in its Schedule to Annex I; or
- (iii) a local level of government.

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access).

2. Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access) do not apply to measures that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.] CAN

**Article X-08: Definitions**

[1. For purposes of this Chapter, a reference to a national or sub-national government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government;] CAN

2. For purposes of this Chapter:

(a) cross-border supply of services is defined as the supply of a service:

- (i) from the territory of a Party into the territory of the other Party
- (ii) in the territory of a Party to the service consumer of the other Party

but does not include the supply of a service in the territory of a Party by a [covered] CAN investment as defined in Chapter XY (Investment – [relevant article]) [in that territory] CAN.



[(b) 'services' includes any service in any sector except services supplied in the exercise of governmental authority.

'a service supplied in the exercise of governmental authority' means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.] EU

**aircraft repair and maintenance services** mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

**computer reservation system services** mean services supplied by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

**selling and marketing of air transport services** mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions

**service supplier** means any person that supplies or seeks to supply a service, [including as an investor] CAN

[(g)Notwithstanding the preceding paragraph, shipping companies established outside the European Union or Canada and controlled by nationals of a Member State of the European Union or of Canada, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation in that Member State or in Canada and carry the flag of a Member State or Canada.

(h) 'economic integration agreement' means an agreement substantially liberalising trade in services and establishment pursuant to WTO rules.] EU

**DOMESTIC REGULATION (EU)**

<b>DRAFT TEXT ON DOMESTIC REGULATION</b>
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**In blue, EU proposal of language**

**In red, CAN proposal of language**

**CHAPTER V - REGULATORY FRAMEWORK**

**SECTION II - DOMESTIC REGULATION**

**ARTICLE X.1 - SCOPE AND DEFINITIONS**

1. The following disciplines apply to measures by the Parties relating to licensing requirements and procedures, qualification requirements and procedures that affect:

- a) cross-border supply of services;
- b) establishment [CAN of an enterprise] in their territory [EU: of juridical and natural persons] [CAN by an investor] as defined in Article X of this Agreement;
- [ EU c) temporary stay in their territory of natural persons as defined in Article X of this Agreement.]

[EU 2. These disciplines shall only apply to sectors for which the Party has undertaken specific commitments and to the extent that these specific commitments apply.]

3. These disciplines do not apply to measures to the extent that they constitute reservations subject to scheduling under Articles X (Market access), X (National Treatment) [CAN and, X (MFN)].

4. [CAN - EU: These disciplines shall not apply to the following economic activities: ]

*[Note: sectoral exclusions, in addition to those exclusions already provided by paragraph 2 (i.e. uncommitted sectors), are to be included here depending on (i) the specific commitments to be made; and (ii) the specific sectoral or regulatory disciplines that are agreed upon]*

5. For the purpose of this chapter,

## LIMITE

"Licensing requirements" are substantive requirements, other than qualification requirements, with which a [EU natural or a juridical person] is required to comply in order to obtain, amend or renew authorization to supply a service [CAN or establish an enterprise].

"Licensing procedures" are administrative or procedural rules that a [EU natural or a juridical person], seeking authorization to supply a service [CAN or establish an enterprise], including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements.

"Qualification requirements" are substantive requirements relating to the competence of a [EU natural person] to supply a service [CAN or establish an enterprise], and which are required to be demonstrated for the purpose of obtaining authorization to supply a service [CAN or establish an enterprise].

"Qualification procedures" are administrative or procedural rules that a [EU natural person] must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorization to supply a service [CAN or establish an enterprise].

"Competent authorities" are any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, which takes a formal decision concerning the authorisation to supply a service [ EU: , including through establishment, or concerning the authorisation to establish in an economic activity other than services.]

[ EU For the sake of this chapter, "Authorisation" is any procedure including qualification procedure, under which a service provider is in effect required to take steps in order to obtain from a competent authority a decision concerning access to or exercise of a service.]

### ARTICLE X.2 - LICENSING AND QUALIFICATION CONDITIONS

1. Each Party shall ensure that licensing and qualification requirements and procedures shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.
2. The criteria referred to in paragraph 1 shall be:
  - a) clear and transparent
  - b) objective
  - c) established in advance and made publicly accessible

3. Each Party shall ensure that an authorisation or a license shall be granted as soon as the competent authority determines that the conditions have been met and, once granted, enters into effect without undue delay, in accordance with the terms and conditions specified therein.

4. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross border supply of services or temporary presence of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.

5 [ EU Where the number of licenses or authorisations available for a given activity is limited because of the scarcity of available natural resources or technical capacity, the Parties shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.]

6. [ EU: Subject to the provisions specified by this Article, in establishing the rules for the selection procedure, the Parties may take into account legitimate public policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.]

#### ARTICLE X.3 - LICENSING AND QUALIFICATION PROCEDURES

1. Each Party shall ensure that licensing and qualification procedures are as simple as possible and do not [ EU unnecessarily complicate or delay] the provision of the service [EU or the establishment of an enterprise.] [CAN unnecessarily delay the granting of an authorization]

2. Any licensing fees<sup>26</sup> which the applicants may incur from their application [ EU: shall be reasonable and commensurate with the costs incurred and do not in themselves restrict the supply of a service][CAN should be reasonable and cost-oriented].

3. Each Party shall ensure that the procedures used by and the decisions of the competent authority in the licensing or authorisation process are impartial with respect to all applicants. The competent authority should be operationally independent of and not

<sup>26</sup> [EU: Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.]

## LIMITE

accountable to any supplier of the services for which the licence or authorisation is required.

4. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under similar conditions of authenticity as paper submissions.

5. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Party should establish the normal timeframe for processing of an application.

6. In the case where an application is considered to be incomplete, the competent authority shall, within a reasonable period of time, inform the applicant, identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.

7. Authenticated copies should be accepted, where considered appropriate, in place of original documents.

8. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. Upon request [and as appropriate,] the applicant shall also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

### *Recognition of Qualifications (CAN)*

<b>MUTUAL RECOGNITION</b>
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**In blue, EU proposal of modification**

**In red, CAN proposal of modification**

#### **RECOGNITION OF QUALIFICATIONS**

[ Article XY (CETA CBTS Chapter): Recognition<sup>27 28</sup> ]

**1. Scope and Objectives / Article 1 Objectives and Scope**

1. This [Annex] Chapter establishes the framework within which the Parties shall cooperate to facilitate a fair, transparent [timely] and consistent regime of recognition of professional qualifications and determines the general conditions for the negotiation of agreements on the mutual recognition of professional qualifications [between the EU and Canada]. [The Annex applies to the cooperation for the recognition of qualifications of workers practicing regulated professions and trades. ]

2. This chapter applies to professions which are regulated in all or some EU Member States and in Canada.

3. Nothing in this Chapter shall prevent a Party from requiring that natural persons must possess the necessary qualifications and /or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

[3] 4. No Party may accord recognition in a manner that would constitute a means of discrimination in the application of its criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

**[ ANNEX XY – COOPERATION ON THE RECOGNITION OF QUALIFICATIONS ]**

**[ 1. Scope and Objectives]**

**Article 2 Definitions**

**Professional experience** means effective and legal practice of the [ regulated ] profession [or trade taken into account for the determination of a compensatory measure];

**Professional Qualifications** mean the qualifications attested by evidence of formal qualifications and/or professional experience [the requirements relating to the competence to practice a profession or trade as established by a competent authority, and which are required for the purpose of obtaining a legal authorization from that competent authority to practice;]

<sup>27</sup> Pending the conclusion of negotiations on the dispute settlement chapter of the agreement, Canada reserves its position on the application of dispute settlement, in whole or in part, to disciplines on mutual recognition.

<sup>28</sup> Canada and the European Union will need to discuss further the status of existing MRAs under the CETA disciplines to be agreed upon.

**Regulated profession** means a professional activity, the exercise of which –including the use of a professional title- is subject to the possession of specific professional qualifications, by virtue of legislative, regulatory or administrative provisions.

**3. Recognition / Article 3 Negotiation of an agreement on the mutual recognition of professional qualifications**

a) The Parties shall encourage the relevant professional bodies in their respective territories to develop and provide to the [Joint Committee on Cooperation for the Recognition of Qualifications] a joint recommendation on the mutual recognition of professional qualifications.

b) The recommendation shall:

- demonstrate the potential [economic value] [commercial interest] of the mutual recognition of professional qualifications.
- analyse the extent to which the qualification requirements of each Party for the authorisation to exercise a profession are equivalent. Where equivalence is considered insufficient, the recommendation shall identify the possibilities to compensate for any differences in the qualification requirements.

c) Upon receipt of [ a notification of the conclusion of an agreement or arrangement for the recognition of qualifications] the recommendation on the mutual recognition of professional qualifications, the [Joint Committee] shall, within a reasonable period of time, review the [agreement or arrangement] recommendation with a view to ensuring its consistency with this Agreement and, when there is sufficient level of equivalence between the relevant regulations of the Parties and [sufficient evidence of the economic value] [commercial interest] of an agreement on the mutual recognition of professional qualifications, establish the necessary steps to negotiate, through the authorities [empowered by each Party] (*Parties will look to address this issue through a definition of authorities*), an agreement on the mutual recognition of professional qualifications [ The Joint Committee may offer comments and suggestions on the implementation of the agreement or arrangement. Based on the Joint Committee's review, each Party shall encourage its competent authorities, where appropriate, to implement the agreement or arrangement within a mutually agreed time. ]

d) An agreement on the mutual recognition of professional qualifications [shall be enforced] by decision of the [Joint Committee].

[e) Any agreement on the mutual recognition of professional qualifications shall be compatible with the relevant WTO provisions, in particular Art. VII of GATS.]

**2 / Article 4 Guiding Principles**

(a) [Nothing in this [Annex] Chapter will affect public protection measures such as:

## LIMITE

- (i) public health and safety measures; and,
  - (ii) consumer protection measures, including measures required to ensure the quality of services or the sufficiency of language skills necessary for practicing a regulated profession [or trade].
- (b) Recognition requirements and procedures developed pursuant to this Annex should be:
- (i) transparent and accessible;
  - (ii) consistently applied;
  - (iii) fair and objective; and
  - (iv) provide for timely and effective implementation of results.]

### Article 5 Recognition

a) The recognition of professional qualifications provided by an agreement on the mutual recognition of professional qualifications referred to in Article [3] shall allow the beneficiary to take up and pursue in the territory of the host jurisdiction professional activities in accordance with the terms and conditions specified in the agreement.

[ (a) Where the qualifications of a worker of a Party for a specific occupation are recognized by another Party's competent authorities pursuant to an agreement or arrangement referred to in Article XY(1), then:

(i) in the event the worker is a national of a [Member State of the European Union], he/she shall be accorded by Canada treatment no less favourable than the most favourable treatment accorded to a national of Canada, in like circumstances, under Chapter 7 of the *Agreement on Internal Trade*, as it may be amended from time to time; and

(ii) in the event the worker is a national of Canada, he/she shall be accorded by [the European Union/any Member State of the European Union] treatment no less favourable than the most favourable treatment accorded to a national of a Member State of the European Union, in like circumstances, under [EU law], as it may be amended from time to time.]

Where the professional qualifications of a person in a Party are recognised by the other Party pursuant to an MRA, the competent authorities of the host jurisdiction shall give this person a treatment no less favourable than the most favourable treatment accorded to the persons which are certified or attested on its own territory.

(b) c) Recognition under an agreement on the mutual recognition of [professional] qualifications referred to in Article XY cannot be conditioned upon:

- (i) a service supplier meeting a citizenship or any form of residency requirement, or



(ii) a service supplier's education, experience or training having been acquired in any particular jurisdiction,

subject to the application of public protection measures referred to in Article [2(a) XY] of this [Annex] Chapter.

**5 / Article 6      Joint Committee on Cooperation for the Recognition of Qualifications**

a) [No later than six months after the entry into force of this Agreement], The Parties hereby establish a Joint Committee [shall be established to implement] responsible for the implementation of the objectives of Article XY [and this Annex] of this Chapter.  
The Joint Committee shall:

(i) comprise representatives of each Party [, including representatives of the Parties' jurisdictional authorities;]

(ii) be co-chaired by the Canada and the European Union;

(iii) meet within one year after this Agreement enters into force, and thereafter as necessary or as agreed, [but at least once every year; ]

(iv) [make its decision by unanimous consent] , and determine its own rules of procedure;

(v) as necessary and appropriate, create sub-committees which may comprise representatives of the Parties' competent authorities, professional bodies, public institutions or any other authority or body that would be relevant to the negotiation of an agreement for the recognition of qualifications;

(vi) facilitate the exchange of information regarding laws, regulations, policies and practices concerning standards or criteria for the authorization, licensing or certification of [ workers practicing ] regulated professions [and trades] ;

(vii) make publicly available information regarding the negotiation and implementation of agreements for the recognition of qualifications;

(viii) report to the [CETA Commission], [on an annual basis], on the progress of the negotiation and implementation of agreements for the recognition of qualifications; and

(ix) as appropriate, provide information and complement the guidelines set out in [ Section A of this] Annex to this Chapter.

[ (b)    The Parties' jurisdictional authorities shall:

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(i) identify competent authorities which have indicated their interest to negotiate an agreement or arrangement for the recognition of qualifications and ensure that the list in Section B of this [Annex] is updated, as needed;

(ii) as appropriate, establish, in cooperation with their competent authorities, a work plan, including timelines and priorities for the negotiation of agreements or arrangements for the recognition of qualifications between competent authorities and advise the Joint Committee accordingly;

(iii) notify the Joint Committee of the conclusion of any negotiations and of any recognition accorded autonomously;

(iv) facilitate contacts and negotiations between competent authorities; and

(v) where appropriate, encourage competent authorities which have not indicated their interest to negotiate agreements or arrangements for the recognition of qualifications to do so ].

### **4 / Article 7 Guidelines for the Negotiation and Conclusion of Mutual Recognition Agreements [or Arrangements ] of professional qualifications**

[a] As part of the framework of cooperation to achieve recognition of qualifications, the Parties set forth in [Section A of this] Annex to this Chapter non-binding guidelines with respect to the negotiation and conclusion of agreements [or arrangements for the] on the mutual recognition of professional qualifications.

[ (b) Section B of this [Annex] contains a list, established by each jurisdictional authority of a Party, indicating the competent authorities which are interested in discussions/negotiations for the purposes of concluding mutual recognition agreements or arrangements. The listing is voluntary and non-binding, and it does not in any way prejudice the right of the competent authorities to decide whether or not to enter into negotiations. ]

### **6 / Article 8 Contact Points**

As required, each member of the Joint Committee shall establish one or more contact points for the administration of this [Annex] Chapter.

## ANNEX

### **Guidelines for Mutual Recognition Agreements [or Arrangements] (MRAs)**

## Introduction

[ Section A of] This Annex provides practical guidance for the Parties' [competent authorities] entering into mutual recognition negotiations with respect to regulated professions [and trades.]

The objective of these guidelines is to facilitate the negotiation of MRAs by the Parties' [competent authorities while respecting the principle of public protection.]

These guidelines [contained in this Section] are non-binding [but may be considered by competent authorities when negotiating MRAs]. They do not modify or affect the rights and obligations of the Parties under this Agreement.

The examples listed under the various sections of these guidelines are provided by way of illustration.

## I. Conduct of Negotiations

### 1. Opening of Negotiations

The [competent authorities] entities that are involved in the negotiations provide to their respective relevant [jurisdictional] authorities information on the initiation of negotiations. The information provided should include the following:

- (a) the intent to enter into negotiations;
- (b) the official designation of the [competent authorities] entities involved;
- (c) a contact point to obtain further information [from the competent authorities];
- (d) the subject of negotiations (specific activities covered); and
- (e) the expected time of the start [and completion] of negotiations.

The relevant [jurisdictional] authorities will provide other members of the Joint Committee with this information.

### 2. Results

Upon the conclusion of an MRA, the information that the [competent authorities] entities involved should supply to the relevant [jurisdictional] authorities should include:

- (a) the content of the agreement (if it is a new MRA); or
- (b) significant modifications to the MRA (if an MRA already exists).

## II. Form and Content of the Agreement [Arrangement]

*This section sets out various issues that may be addressed in any negotiations and, if so agreed, included in the final MRA. It outlines some basic ideas on what the competent authorities might require of foreign professionals [or trade persons] seeking to take advantage of an MRA.*

**1. Participants**

The MRA should identify clearly

[(a) the competent authorities that are parties to the MRA and] the Parties to the agreement ;

[(b) the status and area of competence of each participating competent authority.]

**2. Purpose of Agreement**

The purpose of the MRA should be clearly stated

**3. Scope of the MRA**

The MRA should set out clearly:

a) the scope of the MRA in terms of the specific profession [or trade] titles and activities it covers;

b) who is entitled to use the professional [or trade] titles concerned;

c) whether the recognition mechanism is based on formal qualifications, the licence obtained in the home territory, or on some other requirement; and

d) whether the MRA covers temporary and/or permanent [licensing] access to the profession [or trade] concerned.

**4. Mutual Recognition Provisions**

The MRA should clearly specify the conditions to be met for recognition in the host territories and the level of equivalence agreed.

**[ (a) *Licensing or Registration* ]**

[If the MRA is to be negotiated based on recognition of qualifications, the]

The following four-step process should be considered to simplify and facilitate the recognition of the qualifications.

**Four-Step Process for the Recognition of Qualifications**

(i) Step One: Verification of Equivalency

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Competent authorities should verify the overall equivalence of the scopes of practice or qualifications of the regulated profession [or trade]. [A determination of overall equivalency would entail a general, rather than a detailed, analysis.]

The examination of qualifications should entail the collection of all relevant information pertaining to the scope of practice rights related to a legal competency to practice or to the qualifications required for a specific regulated profession [or trade.]

Consequently, competent authorities should:

- identify activities or groups of activities covered by the scope of practice rights of the regulated profession [or trade]; and

- identify the qualifications required in the home jurisdiction. These may include, but are not limited to, the following elements:

- the minimum level of education required (e.g., entry requirements, length of study, subjects studied);
- the minimum level of experience required (e.g., location, length and conditions of practical training or supervised professional practice prior to licensing, framework of ethical and disciplinary standards);
- examinations passed (especially examinations of professional competency);
- the extent to which home country qualifications are recognised in the host territory; and
- the qualifications which the host competent authorities are prepared to recognise, for instance, by listing particular diplomas or certificates issued, or by reference to particular minimum requirements to be certified by the authorities of the territory of origin, including whether the possession of a certain level of qualification would allow recognition for some activities of the scope of practice but not others (level and length of education, major educational focuses, overall subjects and areas).

There is an overall equivalence between the scopes of practice rights or the qualifications of the regulated profession [or trade] if there are no substantial differences between them in either jurisdiction.

### (ii) Step Two: Evaluation of Substantial Differences

There is a substantial difference between the scopes of qualifications of a regulated profession [or trade] when there are important differences in the essential knowledge required for pursuing the profession, and when the training received in the home jurisdiction differs significantly in terms of duration or content between the jurisdictions. A difference of one year of duration, for example, could constitute a substantial difference.

There is a substantial difference between scopes of practice when one or more regulated professional activities do not exist in the corresponding profession [or trade] in the home jurisdiction, and when that difference consists of specific training required in one

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jurisdiction and covers substantially different matters from those covered by the formal qualifications.

### (iii) Step Three: Compensatory Measures.

Should the competent authorities determine that there is a substantial difference in the scopes of practice rights or formal qualifications between jurisdictions, they may set compensatory measures to bridge the gap.

A compensatory measure could take the form of, *inter alia*, an adaptation period or, if required, an aptitude test.

Compensatory measures should be proportionate to the substantial difference they seek to address, and should be as minimally restrictive as possible. Competent authorities should also evaluate any practical professional experience obtained in the home jurisdiction to see if such experience is sufficient to remedy, in whole or in part, the substantial difference prior to setting a compensatory measure.

### (iv) Step Four: Identification of the Conditions for Recognition

Once the assessment of the overall equivalency of the scopes of practice rights or qualifications of the regulated profession [or trade] is completed, the competent authorities should indicate in the MRA:

- the legal competency required to practice the regulated profession [or trade];
- the qualifications for the regulated profession [or trade];
- if a compensatory measure is necessary;
- to what extent professional experience can compensate for any substantial differences;
- a description of the compensatory measure, including the use of any adaptation periods or aptitude tests.

## 5. Mechanisms for Implementation

The MRA should state:

- a) the rules and procedures to be used to monitor and enforce the provisions of the agreement;
- [b) the mechanisms for dialogue and administrative co-operation between the parties to the MRA; and]
- c) the means for individual applicants to address any matters arising from the interpretation or implementation of the MRA.

As a guide to the treatment of individual applicants, the MRA should include details on:

- a) the focal point of contact for each competent authority for information on all issues relevant to the application (e.g., name and address of competent authorities, licensing

- formalities, information on additional requirements which need to be met in the host country);
- b) the length of procedures for the processing of applications by the competent authorities of the host country;
  - c) the documentation required of applicants and the form in which it should be presented [and any time limits for applications];
  - d) acceptance of documents and certificates issued in the host territory in relation to qualifications and licensing;
  - e) the procedures of appeal to or review by competent authorities; and
  - [ f) any fees that might be reasonably required].

The MRA should also include the following commitments by competent authorities:

- a) that requests about the measures will be promptly dealt with;
- b) that adequate preparation time will be provided where necessary;
- c) that any exams or tests will be arranged with reasonable frequency;
- d) that fees to applicants seeking to take advantage of the terms of the MRA will be proportional to the costs to the host territory; and
- e) to supply information on any assistance programmes in the host country for practical training, and any commitments of the host country in that context.

#### 6. Licensing and Other Provisions in the Host Country

Where applicable:

- a) the MRA should also set out the means by which, and the conditions under which, a licence is actually obtained following the establishment of eligibility, and what this licence entails (e.g., a licence and its contents, membership of a professional body, use of professional and/or academic titles). Any licensing requirements other than qualifications should be explained and should include requirements relating to:
  - (i) have an office address, maintain an establishment or be a resident;
  - (ii) language skills;
  - (iii) proof of good character;
  - (iv) professional indemnity insurance;
  - (v) compliance with host territory's requirements for use of trade/firm names; and
  - (vi) compliance with host territory ethics (e.g., independence and good conduct); and
- b) in order to ensure the transparency of the system, the MRA should include the following details for each host territory:
  - (i) the relevant laws and regulations to be applied (e.g. disciplinary action, financial responsibility, liability);
  - (ii) the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential effects on [workers practicing a profession or trade] professional activities;
  - (iii) the means for the ongoing verification of competence; and
  - (iv) the criteria for, and procedures relating to, revocation of the registration [of workers practicing a profession or trade].

**7. Revision of the Agreement**

If the MRA includes terms under which it can be reviewed or revoked, the details should be clearly stated.

**8. Transparency**

[A Party's competent authorities] The Parties shall:

- a) make publicly available agreements [or arrangements] concluded [pursuant to this Annex]; and
- b) notify the [competent authorities of an] other Party of any modifications to qualifications that may affect the application or implementation of an agreement [or arrangement] concluded [pursuant to this Annex]. Where possible, the [competent authorities of an] other Party should be given an opportunity to comment on such modifications.

**[Section B – Lists of Interested Competent Authorities]**

[ The following list from each Party's jurisdictional authorities provides an indication of competent authorities interested in entering into discussions/negotiations for the purposes of concluding a mutual recognition agreement or arrangement. The listing is voluntary and non-binding, and does not in any way prejudice the right of the competent authorities to enter into negotiations or not.

For Canada:

For the EU: ]

**[ Section C ] - Definitions**

For purposes of this Annex:

**Adaptation period** means the pursuit of a regulated profession [or trade] in the host jurisdiction under the responsibility of a qualified person, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be subject to an assessment. The detailed rules governing the adaptation period, its assessment and the professional status of the person under supervision shall be set out, as appropriate, in the host jurisdiction's laws and regulations;

**Aptitude test** means a test limited to the professional knowledge of applicants, made by the authorities of the host territory with the aim of assessing the ability of applicants to pursue a regulated profession [or trade] in that territory;

**Competent authority** means [ the professional body, public institution or any other authority or public professional agency ] any authority or body, designated pursuant to legislative, regulatory or administrative provisions and [empowered] by the European Union or one of its Member states, or by Canada [ by a jurisdictional authority ] to recognize qualifications and authorize the practice of a profession [ or trade ] through the



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issuance of a [ permit ] authorisation under the jurisdictional authority's laws and regulations;

[ **Jurisdictional authority** means the legislative or constitutional body from which the delegated authority of a competent authority is legally derived;

In the case of Canada, jurisdictional authority means the Government of Canada, the government of a province or the government of a territory;

In the case of the European Union, jurisdictional authority means: ]

**Scope of practice** means an activity or group of activities covered by a regulated [profession or trade.]

### ***COMPUTER SERVICES (EU)***

### ***POSTAL AND COURIER SERVICES (EU)***

### ***INTERNATIONAL MARITIME TRANSPORT SERVICES***

## FINANCIAL SERVICES

Formatiert: Schriftart: Fett,  
Französisch (Frankreich)

Formatiert: Französisch (Frar

### Overview and Key Messages

- The consolidated text attaches seeks to find areas of commonality, and underlines areas of differences.
- There is mutual agreement by both Canada and the EU to put aside the issue of what structure an eventual chapter on financial services will take.
- There are, however, important differences between the two approaches that can be underlined:
  1. Canada's proposal is based on a stand-alone chapter that underlines that financial services is not a sector like other services sectors – it is profoundly regulated and explicitly recognises that the exception for prudential supervision in the operation of the chapter is not like other exceptions across the agreement;
  2. Canada's proposal accommodates investor-state/investor protection rules;
  3. Canada's proposal carefully circumscribes the types of claims that may be raised in an investor-state dispute;
  4. Canada's proposal focuses on regulated financial institutions, not all financial services providers;
  5. Canada's proposal recognises that the establishment provisions support:
    - the principle of the "right to establish" rather than a statement of a willingness to act in a given manner; i.e., list of measures that should not be engaged in found in the EU model
    - achieving the ideal trade outcome of allowing for the greatest of ease of trade and the most trade liberalising;
    - the concept that establishment is an important part of the monitoring of the safety and soundness of the financial system, in that it explicitly recognizes the conditions under which establishment is allowed.
- The development of consolidated text might usefully serve to identify what provisions should be included in an eventual financial services chapter, without prejudice to the structure to be adopted. From Canada's perspective, these provisions should include:
  - national treatment and most-favoured nation provisions

- strong prudential exception
- strong establishment provisions
- dedicated dispute settlement provisions
- scope provisions that focus on regulated financial institutions
- cross-border trade provisions

<p><b><u>Scope and Coverage</u></b></p> <p>1. This Chapter applies to measures adopted or maintained by a Party relating to:</p> <ul style="list-style-type: none"> <li>a) financial institutions of the other Party;</li> <li>b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and</li> <li>c) cross-border trade in financial services.</li> </ul> <p>2. Articles X (Investment - Transfers), X (Investment - Expropriation and Compensation), X (Investment - Special Formalities and Information Requirements), X (Investment - Denial of Benefits), X (Investment - Health, Safety and Environmental Measures) and X (Cross-Border Trade in Services - Denial of Benefits) are hereby incorporated into and made a part of this Chapter. Section B of Chapter</p>	<p><b><u>Scope and Coverage</u></b></p> <p>This [Chapter] [Sub-Section] applies to measures adopted or maintained by a Party relating to:</p> <ul style="list-style-type: none"> <li>a) financial institutions of the other Party;</li> <li>b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and</li> <li>c) cross-border trade in financial services.]</li> </ul> <p>[sets out the principles of the regulatory framework for all financial services liberalised pursuant to Sections 2, 3 and 4 of this Chapter.</p> <p>2. For the purpose of this Chapter</p> <ul style="list-style-type: none"> <li>(a) 'financial service' means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities: <ul style="list-style-type: none"> <li>A. Insurance and insurance-related services <ul style="list-style-type: none"> <li>1. direct insurance (including co-insurance):</li> </ul> </li> </ul> </li> </ul>	<p><b>SUB-SECTION 5</b>  <b>FINANCIAL SERVICES</b>  <b>ARTICLE 39: SCOPE AND DEFINITIONS</b></p> <p>1. This Sub-Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Sections 2, 3 and 4 of this Chapter.</p> <p>2. For the purpose of this Chapter</p> <ul style="list-style-type: none"> <li>(a) 'financial service' means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities: <ul style="list-style-type: none"> <li>A. Insurance and insurance-related services <ul style="list-style-type: none"> <li>1. direct insurance (including co-insurance): <ul style="list-style-type: none"> <li>(a) life;</li> <li>(b) non-life;</li> </ul> </li> </ul> </li> </ul> </li> </ul>
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<p>X (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles X (Investment - Transfers), X (Investment - Expropriation and Compensation) or X (Investment - Denial of Benefits) as incorporated into this Chapter.</p>	<ul style="list-style-type: none"> <li>(a) life;</li> <li>(b) non-life;</li> <li>2. reinsurance and retrocession;</li> <li>3. insurance inter-mediation, such as brokerage and agency; and</li> <li>4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.</li> <li>B. Banking and other financial services (excluding insurance): <ul style="list-style-type: none"> <li>1. acceptance of deposits and other repayable funds from the public;</li> <li>2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;</li> <li>3. financial leasing;</li> <li>4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;</li> <li>5. guarantees and commitments;</li> <li>6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>2. reinsurance and retrocession;</li> <li>3. insurance inter-mediation, such as brokerage and agency; and</li> <li>4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.</li> <li>B. Banking and other financial services (excluding insurance): <ul style="list-style-type: none"> <li>1. acceptance of deposits and other repayable funds from the public;</li> <li>2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;</li> <li>3. financial leasing;</li> <li>4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;</li> <li>5. guarantees and commitments;</li> <li>6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following: <ul style="list-style-type: none"> <li>(a) money market instruments (including cheques, bills, certificates of deposits);</li> </ul> </li> </ul> </li> </ul>
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	<p>the following:</p> <ul style="list-style-type: none"> <li>(a) money market instruments (including cheques, bills, certificates of deposits);</li> <li>(b) foreign exchange;</li> <li>(c) derivative products including, but not limited to, futures and options;</li> <li>(d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;</li> <li>(e) transferable securities;</li> <li>(f) other negotiable instruments and financial assets, including bullion;</li> <li>7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;</li> <li>8. money broking;</li> <li>9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;</li> <li>10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable</li> </ul>	<ul style="list-style-type: none"> <li>(b) foreign exchange;</li> <li>(c) derivative products including, but not limited to, futures and options;</li> <li>(d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;</li> <li>(e) transferable securities;</li> <li>(f) other negotiable instruments and financial assets, including bullion;</li> <li>7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;</li> <li>8. money broking;</li> <li>9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;</li> <li>10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;</li> <li>11. provision and transfer of financial information, and financial data processing and related software;</li> </ul>
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	<p>instruments;</p> <p>11. provision and transfer of financial information, and financial data processing and related software;</p> <p>12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.</p> <p>(b) 'financial service supplier' means any natural or juridical person of a Party that seeks to provide or provides financial services. The term 'financial service supplier' does not include a public entity.]</p>	<p>12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.</p> <p>(b) 'financial service supplier' means any natural or juridical person of a Party that seeks to provide or provides financial services. The term 'financial service supplier' does not include a public entity.</p> <p>(c) 'public entity' means:</p> <ol style="list-style-type: none"> <li>1. a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or</li> <li>2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.</li> </ol> <p>(d) 'new financial service' means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not</p>
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<p>3. This Chapter does not prevent a Party, including its public entities, from exclusively conducting or providing in its territory:</p> <p>a) activities or services forming part of a public retirement plan or statutory system of social security; or</p> <p>b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.</p>	<p>This [Chapter] [Section] does not prevent a Party, including its public entities, from exclusively conducting or providing in its territory:</p> <p>a) activities or services forming part of a public retirement plan or statutory system of social security, [except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.]</p>	<p>supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party</p> <p><b>ARTICLE 46: SPECIFIC EXCEPTIONS</b></p> <p>1. Nothing in this Section shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.</p> <p>2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.</p> <p>3. Nothing in this Section shall be construed as preventing a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the</p>
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	<p>b) activities or services for the account or with the guarantee or using the financial resources of the Party, [or] [including] its public entities [except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.]</p>	<p>account or with the guarantee or using the financial resources of the Party, or its public entities except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.</p>
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<p><b>Article 2: National Treatment</b></p> <p>1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.</p> <p>2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favourable than that it accords to its own financial institutions and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.</p> <p>3. For purposes of the national</p>	<p><b><u>National Treatment</u></b></p> <p>Each Party shall accord to [investors of the other Party]</p> <p>[to services and service suppliers of the other Party]</p> <p>treatment no less favourable than that it accords to its own [investors, in like circumstances,] [like services and services suppliers].</p> <p>[with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.]</p> <p>[in respect of all measures affecting the cross-border supply of services]</p> <p>[a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service]</p>	<p><b>ARTICLE 6: NATIONAL TREATMENT</b></p> <p><b><i>Cross-Border Trade</i></b></p> <p>1. In the sectors where market access commitments are inscribed in Annex 7A (Lists of Commitments), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.</p> <p>2. The treatment accorded under paragraph 1 means, with respect to a regional/provincial or local/municipal government, treatment no less favourable than the most favourable treatment accorded by that regional/provincial or local/municipal government to its own like services and service suppliers.</p> <p>3. A Party may meet the requirement of paragraph 1 and 2 by according to services and service suppliers of the other Party, either formally identical</p>
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<p>treatment obligations in paragraph 1 of Article 5 (Cross-Border Trade), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.</p> <p>4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors in financial institutions, financial institutions, investments of investors in financial institutions and financial service suppliers of the Party of which it forms a part.</p>	<p>[with respect to a regional/provincial or local/municipal government, treatment no less favourable than the most favourable treatment accorded by that regional/provincial or local/municipal government to its own like establishments and investors, or to those of other provinces or municipalities, whichever is the more favourable]</p> <p>[with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors in financial institutions, financial institutions, investments of investors in financial institutions and financial service suppliers of the Party of which it forms a part]</p>	<p>treatment or formally different treatment to that it accords to its own like services and service suppliers.</p> <p>4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to like services or service suppliers of the other Party.</p> <p>5. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.</p> <p><b>Establishment</b></p> <p>1. In the sectors inscribed in Annex 7A (Lists of Commitments), and subject to any conditions and qualifications set out therein, with respect to all measures affecting establishment,<sup>29</sup> each Party shall grant to establishments and investors of the</p>
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<sup>29</sup> The obligations in this provision apply also to measures governing the composition of boards of directors of an establishment, such as nationality and residency requirements.

		<p>other Party treatment no less favourable than that it accords to its own like establishments and investors.</p> <p>2. The treatment accorded under paragraph 1 means, with respect to a regional/provincial or local/municipal government, treatment no less favourable than the most favourable treatment accorded by that regional/provincial or local/municipal government to its own like establishments and investors, or to those of other provinces or municipalities, whichever is the more favourable.</p> <p>3. A Party may meet the requirement of paragraph 1 and 2 by according to establishments and investors of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like establishments and investors.</p> <p>4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of establishments and investors of the</p>
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		<p>Party compared to like establishments and investors of the other Party.</p> <p>5 Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant investors.</p>
<p><b>Article 3: Most-Favoured-Nation Treatment</b></p> <p>1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions and cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.</p>	<p><b><u>Most Favoured-Nation Treatment</u></b></p> <p>Each Party shall accord to</p> <p>[investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions and cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.]</p> <p>[services and services suppliers of the other Party a treatment no less favourable than that it</p>	<p><b>ARTICLE 8: MOST-FAVOURED-NATION TREATMENT<sup>30</sup></b></p> <p><u>Cross-Border</u></p> <p>1. With respect to any measures affecting cross-border supply of services covered by this Chapter, unless otherwise provided for in paragraphs 2 and 4, each Party shall accord to services and services suppliers of the other Party a treatment no less favourable than that it accords to like services and services suppliers of a major trading economy in the context of an economic integration agreement.</p> <p>2. Paragraph 1 shall not apply to economic integration agreements that create an internal market in services, and to which a Party is a signatory.</p> <p>3. The obligations set by paragraph 1 of</p>

<sup>30</sup> Nothing in this Article shall be interpreted as extending the scope and coverage of this Section.

<p>2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:</p> <ul style="list-style-type: none"> <li>a) accorded unilaterally;</li> <li>b) achieved through harmonization or other means; or</li> <li>c) based upon an agreement or arrangement with the non-Party.</li> </ul> <p>3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.</p> <p>4. If a Party accords recognition of prudential measures under subparagraph 2(c) and the</p>	<p>accords to like services and services suppliers of a major trading economy in the context of an economic integration agreement.]</p> <p>[establishments and investors of the other Party a treatment no less favourable than that it accords to like establishments and investors of major trading economy in the context of an economic integration agreement.]</p>	<p>this provision shall not apply to treatment granted:</p> <ul style="list-style-type: none"> <li>a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in Services or its Annex on Financial Services,</li> <li>b) under any international agreement or arrangement relating wholly or mainly to taxation, or</li> <li>c) under measures benefiting from the coverage of an MFN exemption listed in Annex 7A (Lists of Commitments)</li> </ul> <p>4. For the purpose of this provision, a "major trading economy" means any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry</p>
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<p>circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement or to negotiate a comparable agreement or arrangement.</p>		<p>into force of the economic integration agreement referred to in paragraph 1.<sup>31</sup></p> <p><b><u>Establishment</u></b></p> <p><b>ARTICLE 14: MOST-FAVOURED-NATION TREATMENT<sup>32</sup></b></p> <p>1. With respect to any measures covered by this Section affecting establishment, unless otherwise provided for in paragraphs 2 and 4, each Party shall accord to establishments and investors of the other Party a treatment no less favourable than that it accords to like establishments and investors of major trading economy in the context of an economic integration agreement.<sup>33</sup></p> <p>2. Paragraph 1 shall not apply to economic integration agreements that create an internal market in services and establishment, and to which a Party is a signatory.</p>
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<sup>31</sup> For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

<sup>32</sup> Nothing in this Article shall be interpreted as extending the scope and coverage of this Section.

<sup>33</sup> The obligation contained in paragraph 1 does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-state dispute settlement procedures.

		<p>3. The obligations set by paragraph 1 of this provision shall not apply to treatment granted:</p> <ul style="list-style-type: none"> <li>a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in services or its Annex on Financial Services,</li> <li>b) under any international agreement or arrangement relating wholly or mainly to taxation, or</li> <li>c) under measures benefiting from the coverage of an MFN exemption listed in Annex 7A (Lists of Commitments)</li> </ul> <p>4. For the purpose of this provision, a "major trading economy" means any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1.5</p>
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		percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1. <sup>34</sup>
<p><b>Article 4: Right of Establishment</b></p> <p>1. A Party shall permit an investor of the other Party that does not own or control a financial institution in the Party's territory to establish a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions or requirements to take a specific juridical form. The obligation not to impose requirements to take a specific juridical form does not prevent a Party from imposing conditions or requirements in connection with the establishment of a particular type of entity chosen by an investor of the other Party.</p> <p>2. A Party shall permit an</p>	<p><b><u>Establishment</u></b></p> <p>[A Party shall permit an investor of the other Party that does not own or control a financial institution in the Party's territory to establish a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions or requirements to take a specific juridical form. The obligation not to impose requirements to take a specific juridical form does not prevent a Party from imposing conditions or requirements in connection with the establishment of a particular type of entity chosen by an investor of the other Party.]</p> <p>[Subject to National Treatment, a Party may prohibit a particular financial service or activity. Such a prohibition</p>	

<sup>34</sup> For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

<p>investor of the other Party that owns or controls a financial institution in the Party's territory to establish such additional financial institutions as may be necessary for the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions. Subject to Article 2, a Party may impose terms and conditions on the establishment of additional financial institutions and determine the institutional and juridical form that shall be used for the supply of specified financial services or the carrying out of specified activities.</p> <p>3. The right of establishment under paragraphs 1 and 2 shall include the acquisition of existing entities.</p> <p>4. Subject to Article 2, a Party may prohibit a particular financial service or activity. Such a prohibition may not apply to all</p>	<p>may not apply to all financial services or to a complete financial services sub-sector such as banking.]</p> <p>[For the purpose of this Article, and without prejudice to other forms of prudential regulation, a Party may require that an investor of the other Party be engaged in the business of providing financial services in the territory of the other Party.]</p> <p>[For the purpose of this Article, "numerical restrictions" means:]</p> <ul style="list-style-type: none"> <li>[(a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test<sup>35</sup>;</li> <li>(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;</li> <li>(c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of</li> </ul>	
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<sup>35</sup> This subparagraph includes measures which require a service supplier of the other Party to have an establishment within the meaning of Article 7.9 (a) or to be resident in its territory as a condition for the cross-border supply of a service.

<p>financial services or to a complete financial services sub-sector such as banking.</p> <p>5. For the purpose of this Article, and without prejudice to other forms of prudential regulation, a Party may require that an investor of the other Party be engaged in the business of providing financial services in the territory of the other Party.</p> <p>6. For the purpose of this Article, "numerical restrictions" means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of a Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.</p>	<p>designated numerical units in the form of quotas or the requirement of an economic needs test<sup>36</sup>]</p>	
<p><b>Article 5: Cross-Border Trade</b></p> <p>1. Each Party shall permit, under terms and conditions that accord national treatment, cross-</p>	<p><b><u>Cross-Border Trade</u></b></p> <p>[Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial</p>	<p><i>SECTION 2 CROSS BORDER SUPPLY OF SERVICES ARTICLE 3: SCOPE AND COVERAGE</i></p> <p>1. This Section applies to measures of</p>

<sup>36</sup> Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

<p>border financial service suppliers of the other Party to supply the financial services specified in Annex X.</p> <p>2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for the purposes of this Article as long as such definitions are not inconsistent with the obligation of paragraph 1.</p> <p>3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party</p>	<p>service suppliers of the other Party]</p> <p>[Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for the purposes of this Article as long as such definitions are not inconsistent with the obligation of paragraph 1.</p> <p>Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.]</p> <p>[For the purposes of this Section</p>	<p>the Parties affecting the cross border supply of all services sectors with the exception of:</p> <ul style="list-style-type: none"> <li>(a) audio-visual services;</li> <li>(b) national maritime cabotage<sup>37</sup> and,</li> <li>(c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than: <ul style="list-style-type: none"> <li>(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;</li> <li>(ii) the selling and marketing of air transport services;</li> <li>(iii) computer reservation system (CRS) services;</li> <li>(iv) groundhandling services</li> <li>(v) airport operation services</li> </ul> </li> </ul> <p><b>ARTICLE 4: DEFINITIONS</b></p>
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<sup>37</sup> Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this chapter covers transportation of passengers or goods between a port or point located in Canada or a Member State of the Community and another port or point located in Canada or Member State of the Community, including on its continental shelf, as provided in the UN Convention on the Law on the Sea and traffic originating and terminating in the same port or point located in Canada or Member State of the Community.

<p>and of financial instruments.</p>	<p>(a) cross-border supply of services is defined as the supply of a service:</p> <ul style="list-style-type: none"> <li>(i) from the territory of a Party into the territory of the other Party</li> <li>(ii) in the territory of a Party to the service consumer of the other Party</li> </ul> <p>(b) 'services' includes any service in any sector except services supplied in the exercise of governmental authority.</p> <p>'a service supplied in the exercise of governmental authority' means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.]</p>	<p><b>For the purposes of this Section</b></p> <p>(a) cross-border supply of services is defined as the supply of a service:</p> <ul style="list-style-type: none"> <li>(i) from the territory of a Party into the territory of the other Party</li> <li>(ii) in the territory of a Party to the service consumer of the other Party</li> </ul> <p>(b) 'services' includes any service in any sector except services supplied in the exercise of governmental authority.</p> <p>'a service supplied in the exercise of governmental authority' means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.</p> <p><b>ARTICLE 5: MARKET ACCESS</b></p> <p>1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for in the specific commitments contained in Annex 7A (Lists of Commitments).</p>
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		<p>2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a administrative subdivision or on the basis of its entire territory, unless otherwise specified in Annex 7A (Lists of Commitments) are defined as:</p> <ul style="list-style-type: none"> <li>(a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test<sup>38</sup>;</li> <li>(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;</li> <li>(c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the</li> </ul>
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<sup>38</sup> This subparagraph includes measures which require a service supplier of the other Party to have an establishment within the meaning of Article 7.9 (a) or to be resident in its territory as a condition for the cross-border supply of a service.

		requirement of an economic needs test <sup>39</sup>
<p><b>Article 6: New Financial Services</b></p> <p>1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt new statutes or modify existing statutes.</p> <p>2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where such authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential</p>	<p><b><u>New Financial Services</u></b></p> <p>Each Party shall permit a [financial institution] [financial service supplier] of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own [financial institutions,] [financial service suppliers] in like circumstances, to supply under its domestic law.</p> <p>A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where such authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.</p> <p>This Article does not prevent a financial institution of a Party from applying to the other Party to consider authorizing</p>	<p><b>ARTICLE 44: NEW FINANCIAL SERVICES</b></p> <p>Each Party shall permit a financial service supplier of the other Party to provide any new financial service that the Party would permit its own financial service suppliers to provide under its domestic law in like circumstances. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for reasons mentioned under Article 40 of this Chapter.</p>

<sup>39</sup> Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

<p>reasons.</p> <p>3. This Article does not prevent a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is not supplied within either Party's territory. That application is subject to the domestic law of the Party receiving the application and is not subject to the obligations of this Article.</p>	<p>the supply of a financial service that is not supplied within either Party's territory. That application is subject to the domestic law of the Party receiving the application and is not subject to the obligations of this Article.</p>	
<p><b>Article 7: Treatment of Certain Information</b></p> <p>This Chapter does not require a Party to furnish or allow access to:</p> <p>a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or</p>	<p><b>Treatment of Certain Information/ Transparency and Confidential Information</b></p>	<p><b>Article 41 – TO BE ADDED</b></p> <p><b>ARTICLE 45: DATA PROCESSING</b></p> <p>1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial</p>



<p>b) any confidential information which, if disclosed, would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.</p> <p><b>Article 11: Transparency</b></p> <p>1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets. Each Party commits to promoting regulatory transparency in financial services.</p> <p>3. Each Party shall, to the extent practicable:</p> <p>a) publish in advance any regulations of general application</p>		<p>service supplier.</p> <p>2 Each Party, reaffirming its commitment<sup>40</sup> to protect fundamental rights and freedom of individuals shall adopt adequate safeguards to protect privacy, in particular with regard to the transfer of personal data.</p> <p><b>ARTICLE 40.3: PRUDENTIAL CARVE-OUT</b></p> <p>3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.</p> <p><b>ARTICLE 51.1 (a): SECURITY EXCEPTIONS</b></p> <p>Nothing in this Agreement shall be construed:</p>
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<sup>40</sup> For greater certainty, this commitment indicates the rights and freedoms set out in the Universal Declaration of Human Rights, the UN Guidelines for the Regulation of Computerised Personal Data Files (UN General Assembly Resolution 45/95 of 14 December 1990), and the OECD Recommendation of the Council concerning guidelines governing the protection of privacy and transborder flows of personal data (adopted by the Council on 23 September 1980).

<p>relating to the subject matter of this Chapter that it proposes to adopt;</p> <p>b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations; and</p> <p>c) allow reasonable time between publication of final regulations and their effective date;</p> <p>and these requirements shall replace those set out in Article X (Transparency - Publication).</p> <p>4. Each Party shall ensure that its regulatory authorities make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.</p> <p>5. On the request of an applicant, a regulatory authority shall inform the applicant of the status of its application. If that authority requires additional information from the</p>		<p>(a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or</p> <p><b>DOMESTIC REGULATION,</b> <b>Section II, Article X.3.1</b></p> <p><b><i>Article X.3</i></b> <b><i>Licensing procedures</i></b></p> <p>1. Licensing procedures and formalities shall be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially.</p>
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<p>applicant, it shall promptly notify the applicant.</p> <p>6. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a cross-border financial service supplier or a financial institution of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall promptly notify the applicant and shall endeavour to make the decision within a reasonable time.</p> <p>7. Each Party shall maintain or establish appropriate mechanisms that will promptly respond to inquiries from interested persons regarding measures of general application covered by this Chapter.</p>		
<p><b>Article 8: Senior Management and Boards of Directors</b></p>		

<p>1. Neither Party may require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.</p> <p>2. Neither Party may require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.</p>		
<p><b>Article 9: Non-Conforming Measures</b></p> <p>1. Articles 2, 3, 4 and 8 do not apply to:</p> <p style="padding-left: 40px;">a) any existing non-conforming measure that is maintained by a Party at the level of:</p> <p style="padding-left: 80px;">(i) the national government, as set out in Section I of its Schedule to Annex XX (Financial Services Annex), or</p>		<p><i>ARTICLE 7: LISTS OF COMMITMENTS</i></p> <p><u>Cross-Border</u></p> <p>1. The sectors liberalised by each of the Parties pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to services and services suppliers of the other Party in those sectors are set out in lists of commitments included in Annex 7A (Lists of Commitments).</p> <p>2. Neither Party may adopt new, or more discriminatory measures with regard</p>

<p>(ii) a sub-national government;</p> <p>b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or</p> <p>c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 2, 3, 4 and 8.</p> <p>2. Article 5 does not apply to:</p> <p>a) any existing non-conforming measure that is maintained by a Party at the level of:</p> <p>(i) the national government, as set out in Section I of its Schedule to Annex XX (Financial Services Annex), or</p>		<p>to services or services suppliers of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.</p> <p><i>ARTICLE 13: LISTS OF COMMITMENTS</i></p> <p><b><u>Establishment</u></b></p> <p>1. The sectors liberalised by each of the Parties pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to establishments and investors of the other Party in those sectors are set out in lists of commitments included in Annex 7A (Lists of Commitments).</p> <p>2. Neither Party may adopt new, or more, discriminatory measures with regard to establishments and investors of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.</p>
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<p>(ii) a sub-national government;</p> <p>b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or</p> <p>c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of this Agreement, with Article 5.</p> <p>3. Articles 2, 3, 4, 5 and 8 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section II of its Schedule to Annex XX (Financial Services Annex).</p> <p>4. Section III of each Party's Schedule to Annex XX sets out certain specific commitments by that Party.</p> <p>5. Where a Party has set out a reservation to Article X (Investment -</p>		
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<p>National Treatment), X (Investment – Most-Favoured-Nation Treatment), X (Cross-Border Trade in Services – National Treatment) or X (Cross-Border Trade in Services – Most-Favoured-Nation Treatment) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Article 2 or 3, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.</p>		
<p><b>Article 10: Exceptions</b></p> <p>1. Nothing in this Chapter or Chapter X (Investment), Chapter X (Cross-Border Trade in Services), Chapter X (Telecommunications), Chapter X (Temporary Entry of Business Persons), Chapter X (Competition Policy, Monopolies and State Enterprises) or Chapter X (Electronic Commerce) shall be construed to prevent a Party from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders, persons to whom a fiduciary duty is owed by</p>	<p><b><u>Prudential Exception</u></b></p> <p>[Nothing in this Chapter or Chapter X (Investment), Chapter X (Cross-Border Trade in Services), Chapter X (Telecommunications), Chapter X (Temporary Entry of Business Persons), Chapter X (Competition Policy, Monopolies and State Enterprises) or Chapter X (Electronic Commerce) shall be construed to prevent a Party from]</p> <p>[Each Party may]</p> <p>Adopt[ing] or maintain[ing] measures for prudential reasons, including for the</p>	<p><b>ARTICLE 40: PRUDENTIAL CARVE-OUT</b></p> <p>1. Each Party may adopt or maintain measures for prudential reasons, including:</p> <ul style="list-style-type: none"> <li>(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;</li> <li>(b) ensuring the integrity and stability of a Party's financial system.</li> </ul> <p>2. These measures shall not be more burdensome than necessary to achieve their aim.</p>

<p>a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's obligations under those provisions.</p>	<p>protection of investors, depositors, policy holders, persons to whom a fiduciary duty is owed by a financial institution/service supplier or cross-border financial service supplier, or to ensure the integrity and stability of the financial system.</p> <p>[These measures shall not be more burdensome than necessary to achieve their aim.]</p> <p>[Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's obligations under those provisions.]</p> <p>Nothing in this [Agreement/Chapter] shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers [or any confidential or proprietary information in the possession of public entities.] <i>Location to be determined</i></p> <p><i>[Addressed in other provisions of the Canadian model – see Treatment of</i></p>	<p>3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.</p> <p>4. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.</p>
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<p>2. Nothing in this Chapter or Chapter X (Investment), Chapter X (Cross-Border Trade in Services), Chapter X (Telecommunications), Chapter X (Temporary Entry of Business Persons), Chapter X (Competition Policy, Monopolies and State Enterprises) or Chapter X (Electronic Commerce) applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article X (Investment-Performance Requirements) with respect to measures covered by Chapter X (Investment) or Article X (Investment-Transfers).</p> <p>4. A Party may adopt or enforce measures necessary to secure</p>	<p><i>Certain Information provisions]</i></p> <p>[Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.]</p> <p><i>[Addressed in other provisions of the Canadian model – see Cross-Border Trade provisions]</i></p> <p>Nothing in this [Agreement ] [Chapter or Chapter X (Investment), Chapter X (Cross-Border Trade in Services), Chapter X (Telecommunications), Chapter X (Temporary Entry of Business Persons), Chapter X (Competition Policy, Monopolies and State Enterprises) or Chapter X (Electronic Commerce)] applies to [non-discriminatory measures of general application taken by any] [activities conducted by a central bank or monetary authority or by any other] public entity in pursuit of monetary [and related credit policies] or exchange rate policies. [This paragraph shall not affect a Party's obligations under Article X</p>	
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<p>compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.</p>	<p>(Investment-Performance Requirements) with respect to measures covered by Chapter X (Investment) or Article X (Investment-Transfers).]</p> <p>[A Party may adopt or enforce measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.]</p>	
	<p><b><u>Self-Regulatory Organisations</u></b></p> <p>If a Party requires a [financial institution or a cross-border financial service supplier] [financial service supplier] of the other Party to be a member of, participate in or have access to a self-</p>	

	<p>regulatory organization to provide a financial service in or into the territory of that Party, or grants privileges or advantages when providing financial services through such self-regulatory organizations, then the requiring Party shall ensure that the self-regulatory organization observes the obligations of [this Chapter] [Articles 7.6, 7.8, 7.12 and 7.14].</p>	
	<p><b><u>Payment and Clearing Systems</u></b></p> <p>Under terms and conditions that accord national treatment, each Party shall grant to [financial services suppliers] [financial institution] of the other Party established in its territory access to payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to a Party's lender of last resort facilities.</p>	

**Article 14: Financial Services Committee**

1. The Parties hereby establish a Financial Services Committee (the "Committee"). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 14.

2. The Committee shall:

a) supervise the implementation of this Chapter and its further elaboration;

b) consider issues regarding financial services that are referred to it by a Party; and

c) participate in the dispute settlement procedures under Article 17.

3. The Committee shall meet annually, or as it otherwise agrees, to assess the functioning of this Agreement as it applies to financial services. The Committee shall

inform the Commission of the results of each meeting.		
<b>Article 15: Consultations</b> <b>Article 16: Dispute Settlement</b> <b>Article 17 : Investment Disputes in Financial Services</b>  <i>To be determined with institutional provisions.</i>	<b><u>Dispute Settlement</u></b>	
<b>Article 18: Definitions</b>  For purposes of this Chapter:		<b>SUB-SECTION 5</b> <b>FINANCIAL SERVICES</b> <b>ARTICLE 39: SCOPE AND</b>

<p><b>Appointing Authority</b> means the Secretary-General, Deputy Secretary-General or next senior member of the staff of the International Centre for Settlement of Investment Disputes, who is not a national of either Party;</p> <p><b>cross-border financial service supplier of a Party</b> means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such service;</p> <p><b>cross-border trade in financial services or cross-border supply of financial services</b> means the supply of a financial service:</p> <ul style="list-style-type: none"> <li>(a) from the territory of a Party into the territory of the other Party,</li> <li>(b) in the territory of a Party by a person of that Party to a person of the other Party, or</li> </ul>	<p>(a) cross-border supply of services is defined as the supply of a service:</p> <ul style="list-style-type: none"> <li>(i) from the territory of a Party into the territory of the other Party</li> <li>(ii) in the territory of a Party to the service consumer of the other Party</li> </ul>	<p><b>DEFINITIONS</b></p> <p>1. This Sub-Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Sections 2, 3 and 4 of this Chapter.</p> <p>For the purpose of this Chapter</p> <ul style="list-style-type: none"> <li>(a) 'financial service' means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities: <ul style="list-style-type: none"> <li>A. Insurance and insurance-related services <ul style="list-style-type: none"> <li>1. direct insurance (including co-insurance): <ul style="list-style-type: none"> <li>(a) life;</li> <li>(b) non-life;</li> </ul> </li> <li>2. reinsurance and retrocession;</li> <li>3. insurance inter-mediation, such as brokerage and agency; and</li> <li>4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.</li> </ul> </li> <li>B. Banking and other financial services (excluding insurance):</li> </ul> </li> </ul>
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<p>(c) by a national of a Party in the territory of the other Party,</p> <p>but does not include the supply of a service in the territory of a Party by an investment in that territory;</p> <p><b>financial institution</b> means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;</p> <p><b>financial institution of the other Party</b> means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;</p> <p><b>financial service</b> means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of</p>	<p>(a) 'financial service' means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities:</p> <p>A. Insurance and insurance-related services</p> <ol style="list-style-type: none"> <li>1. direct insurance (including co-insurance):</li> <li>(a) life;</li> <li>(b) non-life;</li> <li>2. reinsurance and retrocession;</li> <li>3. insurance inter-mediation, such as brokerage and agency; and</li> <li>4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.</li> </ol> <p>B. Banking and other financial services (excluding insurance):</p> <ol style="list-style-type: none"> <li>1. acceptance of deposits and other repayable funds from the public;</li> <li>2. lending of all types, including consumer credit, mortgage credit, factoring and</li> </ol>	<ol style="list-style-type: none"> <li>1. acceptance of deposits and other repayable funds from the public;</li> <li>2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;</li> <li>3. financial leasing;</li> <li>4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;</li> <li>5. guarantees and commitments;</li> <li>6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:             <ol style="list-style-type: none"> <li>(a) money market instruments (including cheques, bills, certificates of deposits);</li> <li>(b) foreign exchange;</li> <li>(c) derivative products including, but not limited to, futures and options;</li> <li>(d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;</li> <li>(e) transferable securities;</li> <li>(f) other negotiable instruments and financial</li> </ol> </li> </ol>
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<p>a financial nature. Financial services include the following activities:</p> <p>Insurance and insurance-related services</p> <p>(a) Direct insurance (including co-insurance):</p> <p>(i) life,</p> <p>(ii) non-life,</p> <p>(b) Reinsurance and retrocession;</p> <p>(c) Insurance intermediation, such as brokerage and agency;</p> <p>(d) Service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;</p> <p>Banking and other financial services (excluding insurance)</p> <p>(e) Acceptance of deposits and other repayable</p>	<p>financing of commercial transaction;</p> <p>3. financial leasing;</p> <p>4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;</p> <p>5. guarantees and commitments;</p> <p>6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:</p> <p>(a) money market instruments (including cheques, bills, certificates of deposits);</p> <p>(b) foreign exchange;</p> <p>(c) derivative products including, but not limited to, futures and options;</p> <p>(d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;</p> <p>(e) transferable securities;</p> <p>(f) other negotiable instruments and financial assets, including bullion;</p> <p>7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services</p>	<p>assets, including bullion;</p> <p>7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;</p> <p>8. money broking;</p> <p>9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;</p> <p>10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;</p> <p>11. provision and transfer of financial information, and financial data processing and related software;</p> <p>12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.</p> <p>(b) 'financial service supplier' means any natural or juridical person of a Party that seeks to provide or provides financial</p>
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<p>funds from the public;</p> <p>(f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;</p> <p>(g) Financial leasing;</p> <p>(h) All payment and money transmission services, including credit, charge and debit cards, travelers cheques, and bankers drafts;</p> <p>(i) Guarantees and commitments;</p> <p>(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:</p> <p>(i) money market instruments (including cheques, bills, certificates of</p>	<p>related to such issues;</p> <p>8. money broking;</p> <p>9. asset management, such as cash or portfolio management; all forms of collective investment management, pension fund management, custodial, depository and trust services;</p> <p>10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;</p> <p>11. provision and transfer of financial information, and financial data processing and related software;</p> <p>12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.</p>	<p>services. The term 'financial service supplier' does not include a public entity.</p> <p>(c) 'public entity' means:</p> <ol style="list-style-type: none"> <li>1. a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or</li> <li>2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.</li> </ol>
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<p>deposits),</p> <p>(ii) foreign exchange,</p> <p>(iii) derivative products including, futures and options,</p> <p>(iv) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements,</p> <p>(v) transferable securities,</p> <p>(vi) other negotiable instruments and financial assets, including bullion,</p> <p>(k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to</p>	<p><b>financial service supplier of a Party</b> means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;</p> <p>[financial service supplier' means any natural or juridical person of a Party that seeks to provide or provides financial services. The term 'financial service supplier' does not include a public entity.]</p>	
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<p>such issues;</p> <p>(l) Money broking;</p> <p>(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;</p> <p>(n) Settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;</p> <p>(o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;</p> <p>(p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in</p>	<p>[new financial service means, with respect to a Party, a financial service that is not supplied in the Party's territory but is supplied within the territory of the other Party, and includes</p>	
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<p>subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;</p> <p><b>financial service supplier of a Party</b> means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;</p> <p><b>investment</b> means "investment" as defined in Article X (Investment - Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:</p> <p>(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and</p>	<p>any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory]</p> <p>[new financial service' means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party]</p> <p>[<b>public entity</b> means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and]</p> <p>[a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or</p> <p>a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.]</p>	<p>new financial service' means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party</p> <p>public entity' means:</p> <p>1. a government, a central bank or a</p>
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<p>(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;</p> <p>for greater certainty:</p> <p>(c) a loan to, or debt instrument issued by, a Party or a state enterprise thereof is not an investment; and</p> <p>(d) a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article X (Investment - Definitions);</p>	<p><b>self-regulatory organization</b> means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.</p>	<p>monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or</p> <p>2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.</p>
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<p><b>investor of a Party</b> means "investor of a Party" as defined in Article X (Investment - Definitions);</p> <p><b>new financial service</b> means, with respect to a Party, a financial service that is not supplied in the Party's territory but is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;</p> <p><b>person of a Party</b> means "person of a Party" as defined in Article X (Initial Provisions and General Definitions - Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;</p> <p><b>public entity</b> means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and</p>		
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## TEMPORARY ENTRY [AND PRESENCE]

### Article 1: General Principles

1. This Chapter reflects the preferential trading relationship between the Parties as well as the mutual objective to facilitate trade in services and investment through the granting of temporary entry [and stay]EU to natural persons for business purposes and through ensuring transparency of the process.

2. Subject to paragraphs 4 and 5, each Party shall apply its measures relating to the provisions of this Chapter and, in particular, shall apply [expeditiously]CAN those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

3. [Subject to paragraphs 4 and 5,] this Chapter applies to measures of the Parties concerning the temporary entry [and stay]EU into their territories of [key personnel, business services sellers, contractual services suppliers and independent professionals, short term visitors for business purposes]EU

4. This Chapter shall not apply to measures affecting natural persons seeking access to [permanent employment in]CAN the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

5. Also with a view to the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories, nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of [this Chapter]. [The sole fact of requiring a visa for natural persons of certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment]CAN.

[6. All other requirements of the Parties' laws and regulations regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay, minimum wages as well as collective wage agreements. Commitments on movement of persons do not apply in cases where the intent or effect of such movement is to interfere with or otherwise affect the outcome of any labour/management dispute or negotiation.]EU

### Article [2]: [Grant of]CAN Temporary Entry

- [1. Each Party shall [grant]CAN [allow]EU temporary entry to business persons who otherwise comply with its immigration measures applicable to temporary entry in accordance with this Chapter.]CAN



- [2. A Party may refuse to issue a work permit or authorization to a business person where the temporary entry of that person might affect adversely:
- (a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or
  - (b) the employment of any person who is involved in such dispute.]CAN
- [3. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.] CAN

*Comments:*

*Para 3 should be further discussed in light of the domestic regulation provisions. Intention is to use the same language as the parallel text in the Proposal on Domestic Regulations*

*Para 1 to be discussed in light of the decision whether the market access commitment is taken horizontally or by category*

**Article [3]: Provision of Information**

1. Further to Chapter X (Transparency), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall:
- (a) provide to the other Party relevant materials as will enable the other Party to become acquainted with its measures relating to this Chapter; and
  - (b) no later than one year after the date of entry into force of this Agreement, make [publicly] available explanatory material regarding the requirements for temporary entry under this Chapter, in such a manner as will enable business persons of the other Party to become acquainted with those requirements.
- [2. Each Party shall collect and maintain data relating to the granting of temporary entry by category of business person [who have been issued immigration documentation] under this Chapter. On request, Parties shall make available this data to the other Party, in accordance with its domestic law related to privacy and data protection.]CAN
- [Article 4 missing from document sent by Canadians]

**Article [4]: Transparency and Confidential Information**

## **LIMITE**

- [1. The Parties shall respond promptly to all requests, by the other Party for specific information:
  - (a) on international agreements or arrangements, including on mutual recognition, which pertain to or affect this Chapter, and
  - (b) on standards and criteria for licensing and certification of services suppliers, including information concerning the appropriate regulatory or other body to consult regarding such standards and criteria. Such standards and criteria include requirements regarding education, examinations, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge, and consumer protection
2. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.
3. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of services.
4. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.
5. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent possible, inform the applicant of the reasons for denial of the application.
6. A Party's regulatory authority shall make an administrative decision on a completed application of an investor or a cross-border service supplier of the other Party relating to the supply of a service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not possible for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter. ]EU

### **Article [5]: Contact Points**

1. The Parties hereby establish Contact Points:
  - (a) in the case of Canada:  
Director  
Temporary Resident Policy  
Immigration Branch

Citizenship and Immigration Canada

(b) in the case of the European Commission:

The Director responsible for the implementation of this Chapter  
or their respective successors.

2. The Contact Points shall exchange information as described in [Article 3] and shall meet as required to consider matters pertaining to this Chapter, such as:
  - (a) the implementation and administration of this Chapter;
  - [(b) the development and adoption of common criteria as well as interpretations for the implementation of the Chapter;
  - (c) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis; and
  - (d) proposed modifications to this Chapter.]CAN

#### **Article [6]: Dispute Settlement**

- [1. A Party may not initiate proceedings under Chapter XY (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:
  - (a) the matter involves a pattern of practice;
  - (b) the business person of that Party has exhausted the normal administrative remedies regarding the particular matter; and
  - (c) the Contact Points have been unable to resolve the issue.
2. The remedies referred to in paragraph (1) (b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.]CAN

#### **Article [7]: Relation to Other Chapters**

[No provision of this Agreement shall be interpreted to impose any obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter and Chapters XX , YY and ZZ.]CAN

#### **Article [8]: Definitions [and Coverage]**

For the purpose of this Chapter:

- (a) ['Key personnel' means natural persons employed within a juridical person of one Party, other than a non-profit organisation, and investors who are responsible for the setting-up or the proper control, administration and operation of an establishment.

'Key personnel' comprises 'business visitors' or 'investors' responsible for setting up an establishment, and 'intra-corporate transferees'. ]EU

- (i) ['Business visitors' means natural persons [working in a senior position]EU who are responsible for setting up [and maintaining]CAN an establishment. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party.]EU

- (ii) 'Investors' means natural persons who establish, develop, administer the operation of an investment in a capacity that is supervisory or executive, to which the business person has committed, or is in the process of committing, a substantial amount of capital.

- (iii) 'Intra-corporate transferees' means natural persons who have been employed by a [enterprise]CAN of one Party or have been partners in it for at least one year and who are temporarily transferred to an establishment (that may be a subsidiary, branch or head company of the enterprise) in the territory of the other Party. The natural person concerned must belong to one of the following categories:

1. Senior Personnel means natural persons working in a senior position within [an enterprise] (*to align with investment chapter throughout*) who:

(a) primarily direct the management of the [enterprise], or direct the [enterprise], a department or sub-division thereof; and

(b) exercise wide latitude in decision making, which may include having the authority personally to recruit and dismiss or taking other personnel actions (such as promotion or leave authorizations), and

(i) receive only general supervision or direction principally from higher level executives, the board of directors and/or stockholders of the business or their equivalent, or

(ii) supervise and control the work of other supervisory, professional or managerial employees

and exercise discretionary authority over day-to-day operations.

2. Specialists means natural persons working within a [enterprise] who possess:

- uncommon knowledge of the company's products or services and its application in international markets; or
- an advanced level of expertise or knowledge of the company's processes and procedures such as the company's production, research equipment, techniques or management.

In assessing such knowledge, Parties will consider knowledge that is unusual and different from that generally found in a particular industry that cannot be easily transferred to another individual in the short-term. The knowledge would have been obtained through specific academic qualifications or extensive experience with the company.

3. Graduate trainees means natural persons working within an [enterprise] who possess:

- a university degree; and
- who are temporarily transferred to an establishment in the territory of the other Party for career development purposes; or to obtain training in business techniques or methods<sup>41</sup>.

- (b) ['business sellers' means natural persons who are representatives of a service or goods supplier of one Party seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or goods or entering into agreements to sell services or goods for that supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party. JEU
- (c) 'contractual services suppliers' means natural persons employed by a juridical person of one Party which has no establishment in the territory of the other Party and which has concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services.<sup>42</sup>

<sup>41</sup> The recipient establishment may be required to submit a training programme covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training. The competent authorities may require that training be linked to the university degree which has been obtained.

<sup>42</sup> The service contract referred to under d) and e) shall comply with the laws, regulations and requirements of the Party where the contract is executed.

- (d) 'independent professionals' means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services<sup>43</sup>

**ARTICLE X: CONTRACTUAL SERVICES SUPPLIERS AND INDEPENDENT PROFESSIONALS**

1. For the sectors specified in Annex [...] (contractual services suppliers), each Party shall allow the supply of services into its territory by contractual services suppliers of the other Party, through presence of natural persons, subject to the following conditions:
  - (a) The natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract for a period not exceeding twelve months.
  - (b) The natural persons entering the other Party must be offering such services as an employee of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience<sup>44</sup> in the sector of activity which is the subject of the contract.
  - (c) The natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level<sup>45</sup> and (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements of the Party applicable where the service is supplied.
  - (d) The natural person shall not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during their stay in the other Party.
  - (e) The temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months

<sup>43</sup> The service contract referred to under d) and e) shall comply with the laws, regulations and requirements of the Party where the contract is executed.

<sup>44</sup> Obtained after having reached the age of majority.

<sup>45</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

or, in the case of Luxemburg, twenty-five weeks, in any twelve month period or for the duration of the contract, whichever is less.

- (f) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided.
- (g) The number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be decided by the laws, regulations and requirements of the Party where the service is supplied.
- (h) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annex [...].

2. For the sectors specified in Annex [ ] (independent professionals), each Party shall allow the supply of services into its territory by **independent professionals** of the other Party subject to the following conditions:

- (a) The natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding twelve months.
- (b) The natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract.
- (c) The natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level<sup>46</sup> and (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements of the Party applicable where the service is supplied.
- (d) The temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxemburg, twenty-five weeks, in any twelve month period or for the duration of the contract, whichever is less.
- (e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract, it does not confer entitlement to exercise the professional title of the Party where the service is provided.
- (f) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annex [...].]EU

<sup>46</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

**Article []: Short Term Visitors for Business Purposes[EU]/Business Visitors[CAN]**

1. Each Party shall[grant]CAN [allow]EU, in conformity with their respective legislation, the temporary entry [and stay] in their territories of [short-term visitors for business purposes][business visitors] with a view to carrying out the following activities:

(a) **Meetings and Consultations:** Natural persons attending meetings or conferences, or engaged in consultations with business associates;

(b) **Research and Design:** Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party;

(c) **Marketing research:** Market researchers and analysts conducting [independent research or analysis or] research or analysis for an enterprise located in the territory of the other Party

(d) **Training seminars:** Personnel of an enterprise who enter the territory of the other Party to receive training in techniques and work practices employed by companies or organisations in that Party, provided that the training received is confined to observation, familiarisation and classroom instruction only;

(e) **Trade Fairs and Exhibitions:** Personnel attending a trade fair for the purpose of promoting their company or its products or services;

(f) **Sales:** Representatives or agents of a service or goods supplier taking orders or negotiating the sale of services or goods or entering into agreements to sell services or goods for that supplier, but not delivering goods or services. They do not engage in making direct sales to the general public.

(g) **Purchasing:** Buyers purchasing goods or services for an enterprise, or management and supervisory personnel, engaging in a commercial transaction carried out in the territory of the other Party;

[(h) **Tourism personnel** (hotel representatives, tour and travel agents, tour guides or tour operators) attending or participating in tourism conventions or tourism exhibitions;

**Distribution**

Transportation operators transporting goods or passengers from the territory of a Party to the territory of the other Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party.

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.



**After-Sales or After-Lease Service**

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer software, purchased or leased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

**General Service**

Professionals and technicians engaging in a business activity at a professional or technician level as set out in Appendix X-03.D.

Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.

Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

Translators or interpreters performing services as employees of an enterprise located in the territory of another Party. ]\*

\*to be discussed in the market access discussions for CSS and IP

[provided that they are not engaged in selling their goods or services to the general public or in supplying their goods or services themselves, do not on their own behalf receive any remuneration from a source located within the Party where they are staying temporarily, and are not engaged in the supply of a service in the framework of a contract concluded between a juridical person, who has no commercial presence in the territory of the Party where the short-term visitors for business purposes are staying temporarily, and a consumer there.

2. This entry and temporary stay into their territories, when allowed, shall be for a period of up to 90 days in any twelve-month period.]EU

[3. The Parties understand that short term visitors for business purposes will not require a work permit to the extent that their activities will remain within the scope as defined in paragraphs 1 and 2 of this Article, [provided that the business person otherwise complies with its immigration measures applicable to temporary entry]CAN, on presentation of:

- (a) proof of citizenship or permanent resident status of a Party;

## **LIMITE**

- (b) documentation demonstrating that the business person will be engaged in a business activity set out in Appendix X-03.A.1 and describing the purpose of entry; and
  - (c) evidence demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labour market.
4. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:
- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
  - (b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside the territory of the Party granting temporary entry.
- A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.
5. Neither Party may:
- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
  - (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1
6. Notwithstanding paragraph 3, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.]CAN

## **[Article []: Professionals\***

Professionals, as defined in Article X-08, may seek temporary entry under Section D of Annex X-03, except the following professionals:

- (a) professionals in all health, education and social services sectors and related sectors, including:
  - (i) managers in health/education/social & community services;
  - (ii) physicians/dentists/optometrists/chiropractors/other health professions;
  - (iii) pharmacists, dietitians & nutritionists;
  - (iv) therapy & assessment professionals;
  - (v) nurse supervisors & registered nurses;

## LIMITE

- (vi) psychologists/social workers;
  - (vii) university professors & assistants;
  - (viii) college & other vocational instructors; and
  - (ix) secondary/elementary school teachers & counsellors;
- (b) professionals engaged in activities related to cultural industries as defined in Article X (Exceptions - Definitions) as well as:
- (i) managers in libraries, archives, museums and art galleries; and
  - (ii) creative & performing artists;
- (c) recreation, sports and fitness program and service directors;
- (d) managers in telecommunication carriers;
- (e) managers in postal and courier services;
- (f) Managers in Manufacturing;
- (g) Managers in Utilities;
- (h) Managers in Construction and Transportation; and
- (i) Judges, Lawyers and Notaries except foreign legal consultants.]

### Article[]:Technicians\*

Technicians, as defined in Article X-08, who may seek temporary entry under Section D of Annex X-03 are only:

- (a) civil engineering technologists and technicians;
- (b) electrical and electronics engineering technologists and technicians<sup>47</sup>;
- (c) mechanical engineering technologists and technicians;
- (d) industrial engineering and manufacturing technologists and technicians;
- (e) construction inspectors and estimators;
- (f) engineering inspectors, testers and regulatory officers;

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<sup>47</sup> This includes electronic service technicians.

## LIMITE

- (g) supervisors in the following fields: machining and related activities; printing and related activities; mining and quarrying; oil and gas drilling and service; mineral and metal processing; petroleum, gas and chemical processing and utilities; food, beverage and tobacco processing; plastic and rubber products manufacturing; forest products processing; and textile processing;
- (h) contractors and supervisors in the following fields: electrical trades and telecommunications; pipefitting trades; metal forming, shaping and erecting trades; carpentry trades; mechanic trades; heavy construction equipment crews; and other construction trades, installers, repairers and servicers;
- (i) electricians<sup>48</sup>;
- (j) plumbers;
- (k) industrial instrument technicians and mechanics;
- (l) aircraft instrument, electrical and avionics mechanics, technicians and inspectors;
- (m) underground production and development miners;
- (n) oil and gas well drillers, servicers and testers;
- (o) graphic designers and illustrators;
- (p) interior designers;
- (q) chefs;
- (r) computer and information system technicians; and
- (s) international selling and purchasing agents]

Formatiert: Französisch (Frankreich)

\*Canadian request and offer to be discussed during market access discussions

### [Section E – Spouses

1. Each Party shall grant temporary entry and provide a work permit or other authorization to the spouse of a natural person qualifying for temporary entry under Section B (Traders and Investors), Section C (Intra-Company Transferees) or Section D (Professionals and Technicians), provided said natural person exercises the right

<sup>48</sup> This includes industrial electricians.

of temporary entry and the spouse otherwise complies with existing immigration measures applicable to temporary entry.

2. Neither Party may:
  - (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
  - (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.
3. Notwithstanding paragraph 2, a Party may require the spouse of a natural person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose nationals would be affected with a view to avoiding the imposition of the requirement.]CAN

## TELECOMMUNICATIONS

Canada's proposed text

EU's proposed text

### Article X.1: Scope of Application

1. This Chapter applies to measures adopted or maintained by a Party relating to public telecommunications transport networks or services, subject to a Party's right to restrict the supply of a service in accordance with its Reservations in Annexes I and II.
2. This Chapter does not apply to any measure of a Party affecting the transmission by any means of telecommunications, including broadcast and cable distribution, of radio or television programming intended for reception by the public[, but does not cover contribution links between operators.]EU
3. Nothing in this Chapter shall be construed to:
  - (a) require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services, other than as specifically provided in this Agreement; or
  - (b) require a Party (or require a Party to compel any service supplier) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

### Article X.2: Access to and Use of Public Telecommunications Transport Networks or Services

1. A Party shall ensure that [enterprises] of the other Party are accorded access to and use of public telecommunications transport networks or services on reasonable and non-discriminatory terms and conditions. <sup>49</sup>This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.
2. Each Party shall ensure that [enterprises] of the other Party have access to and use of any public telecommunications transport network or service offered within or across

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<sup>49</sup> **non-discriminatory** means treatment no less favourable than that accorded to any other [enterprise] when using like public telecommunications transport networks or services [in like circumstances];

## LIMITE

its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such [enterprises] are permitted to:

- (a) purchase or lease and attach terminal or other equipment which interfaces with the public telecommunications transport network;
- (b) connect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another [enterprise];
- (c) use operating protocols of their choice; and
- (d) perform switching, signaling, and processing functions.

3. Each Party shall ensure that [enterprises] of the other Party may use public telecommunications transport networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such [enterprises], and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article X (Exceptions - General Exceptions), and notwithstanding the paragraph 3, a Party shall take appropriate measures to protect:

- (a) the security and confidentiality of telecommunications services, or
- (b) the privacy of users of public telecommunications transport services,

subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally;
- (b) protect the technical integrity of public telecommunications transport networks or services; or

**LIMITE**

- (c) ensure that [enterprises] of another Party do not supply services limited by the Party's Reservations in Annexes I and II.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks or services may include:

- (a) restrictions on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for connection with such networks or services;
- (c) requirements, where necessary, for the inter-operability of such services;
- (d) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (e) restrictions on connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another [enterprise]; and
- (f) notification, registration and licensing.



**Article X.3: Authorisation to Provide Telecommunications Services**

1. Each Party should ensure that the authorisation of the provision of telecommunications services, wherever possible, is based upon a simple notification procedure.
2. Where a Party requires a supplier of public telecommunications transport networks or services to have a licence, or other type of authorisation:
  - (a) all the licensing or authorisation criteria and the period of time normally required to reach a decision concerning an application for a licence or authorisation shall be made publicly available;
  - (b) the decision on the application for the licence or other type of authorisation shall be made within a reasonable period of time;
  - (c) the reasons for the denial of a licence or authorisation shall be made known in writing to the applicant upon request; and
  - (d) the fees required for the administration of a licence or authorisation, including the management, control and enforcement, should not exceed administrative costs normally incurred. Mandated contributions to universal service provisions are not considered to be licensing fees. Where a licence provides access to spectrum resources, including spectrum management activities, or to scarce resources required to provide telecommunications services, fees may exceed administrative costs but shall be determined in an objective, transparent and non discriminatory process, such as an auction, tendering or other non-discriminatory means of awarding concessions.

**Article X.4: Competitive Safeguards on Major Suppliers**

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 shall include:
  - (a) engaging in anti-competitive cross-subsidization [or margin squeeze]EU;
  - (b) using information obtained from competitors with anti-competitive results; and

- (c) not making available to other service suppliers, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

*Article X.5: Interconnection*

1. Each Party shall ensure that any major supplier in its territory provides interconnection:

- (a) at any technically feasible point in the network;
- (b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
- (c) of a quality no less favourable than that provided for the own like services of such major supplier or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;
- (d) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that a supplier need not pay for network components or facilities that it does not require for the services to be supplied; and
- (e) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Any supplier authorised to provide telecommunications services shall have the right to negotiate a new interconnection agreement with other providers of publicly available telecommunications networks and services. Each Party shall ensure that Major suppliers are required to establish a reference interconnection offer or negotiate interconnection agreements with other providers of publicly available telecommunications networks and services.

3. Each Party shall ensure that suppliers of public telecommunications transport services that acquire information from another such supplier during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier shall be made publicly available.

5. Each Party shall ensure that major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers where it is appropriate.

#### **Article X.6: Universal Service**

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.

2. Each Party shall ensure that any measure on universal service that it adopts or maintains is administered in a transparent, objective, non-discriminatory and competitively neutral manner. Each Party shall also ensure that any universal service obligation imposed by it is not more burdensome than necessary for the kind of universal service that the Party has defined.

3. All suppliers should be eligible to ensure universal service. When a supplier is to be designated as the provider of a universal service, the selection shall be made through an efficient, transparent and non-discriminatory mechanism.

#### **ARTICLE X.7: SCARCE RESOURCES**

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.

2. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with [Article X (Cross-Border Trade in Services – Market Access), as it applies to either Chapter X (Investment) or Chapter X (Cross-Border Trade in Services)].<sup>50</sup> Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may limit the number of suppliers of public telecommunications transport services. Each Party also retains the right to allocate frequency bands taking into account present and future needs.

3. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

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<sup>50</sup> To be later specified, pending discussion on architecture of the agreement.

**Article X.8: Regulatory Authority**

1. Each Party shall ensure that its regulatory authority is legally distinct and functionally independent from any supplier of public telecommunications transport networks or services.
2. Each Party shall ensure that its regulatory authorities' decisions and procedures are impartial with respect to all market participants.
3. Each Party shall ensure that its regulatory authorities are sufficiently empowered to regulate the sector, including having the power to enforce their decisions relating to the obligations set out in articles X.2 and X.4 through appropriate sanctions. Such sanctions may include financial penalties, corrective orders or the suspension or revocation of licences.

**Article X.9: Resolution of Telecommunication Disputes**

*Recourse to Regulatory Authorities*

1. Further to Article X (Transparency - Administrative Proceedings) and Article X (Transparency - Review and Appeal), each Party shall ensure the following:
  - (a) [enterprises]CAN [of the other party]CAN have timely recourse to its regulatory authority to resolve disputes with suppliers of public telecommunications transport networks or services regarding the matters covered in Articles [X.2 and X.4 - access, competitive safeguards and interconnection] and that, under the domestic law of the Party, are within the regulatory authority's jurisdiction. This shall include, as appropriate, the issuance of a binding decision by the regulatory authority to resolve the dispute within a reasonable period of time.
  - (b) suppliers of public telecommunications transport networks or services [of the other Party]CAN requesting interconnection with a major supplier in the Party's territory have recourse to a regulatory authority to resolve disputes regarding the appropriate terms, conditions and rates for interconnection with such a major supplier within a reasonable and publicly specified period of time.

*Appeal and Review*

2. Each Party shall ensure that an [enterprise] whose interests are adversely affected by a determination or decision of a regulatory authority may obtain review of the determination or decision by an impartial and independent judicial, quasi-judicial or administrative authority, as provided in the domestic law of the Party. Written reasons for the determination or decision of the judicial, quasi-judicial or administrative authority

shall be given. Each Party shall ensure that such determinations or decisions, subject to appeal or further review, are implemented by the regulatory authority.

3. An application for judicial review shall not constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant judicial authority stays such determination or decision.

**Article X.10: Transparency**

1. Further to Articles X (Transparency - Publication) and X (Transparency - Notification and Provision of Information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall make publicly available:

(i) the responsibilities of a regulatory authority in an easily accessible and clear form, in particular where those responsibilities are given to more than one body;

(ii) its measures relating to public telecommunications transport network or services, including:

(A) regulations of its regulatory authority, together with the basis for such regulations;

(B) measures relating to tariffs and other terms and conditions of service;

(C) measures relating to specifications of technical interfaces;

(D) measures relating to conditions for attaching terminal or other equipment to the public telecommunications transport network;

(E) measures relating to notification, permit, registration, or licensing requirements, if any; and

(ii) information on bodies responsible for preparing, amending and adopting standards-related measures.

**[Article X.11: Forbearance]**

The Parties recognize the importance of relying on market forces to achieve legitimate public policy objectives for telecommunications services. To this end, and to the extent provided in its domestic law, each Party may refrain from applying a regulation to a telecommunications service when, following a public process, it is determined that market forces are sufficient to achieve its legitimate public policy objectives in lieu of regulation.]CAN

**[Article X.12: Relation to Other Chapters]**

In the event of any inconsistency between this Chapter and another Chapter in this Agreement, this Chapter shall prevail to the extent of the inconsistency.]CAN

**Article X.13: Definitions**

For the purpose of this [Chapter][Sub-section]:

**cost-oriented** means based on cost and may involve different cost methodologies for different facilities or services;

**[enterprise** means an “enterprise” as defined in Article X (Initial Provisions and General Definitions – Definitions of General Application) and includes a branch of an enterprise;]CAN

**essential facilities** means facilities of a public telecommunications transport network or service that:

- (a) are exclusively or predominantly provided by a single or a limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service;

**interconnection** means linking suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

**intra-corporate communications** means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and,

subject to a Party's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" are as defined by each Party. "Intra-corporate communications" excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates or that are offered to customers or potential customers;

**leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing;

**major supplier** means a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications transport networks or services as a result of :

- (a) control over essential facilities; or
- (b) use of its position in the market;

**network termination point** means the physical point at which a user is provided with access to a public communications network.

**public telecommunications transport network** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

**public telecommunications transport service** means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information. Such services may include, *inter alia*, voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services and mobile and personal communications services and systems;

**regulatory authority** means the body responsible for the regulation of telecommunications;

**service supplier** means a person of a Party that seeks to supply or supplies a service, including a supplier of telecommunications networks or services;

**[supply of a service** means the provision of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party;

(c) by a service supplier of a Party, through an enterprise in the territory of the other Party; or

(d) by a national of a Party in the territory of the other Party;]CAN

**telecommunications services** means all services consisting of the transmission and reception of signals by any electro-magnetic means and do not cover the economic activity consisting of the provision of content by means of telecommunications; and

**user** is an [enterprise] or natural person using or requesting a publicly available telecommunications service.



## **ELECTRONIC COMMERCE**

### **Article X-01: Objective, Scope and Coverage**

1. The Parties recognise that electronic commerce increases economic growth and trade opportunities in many sectors and confirm the applicability of WTO rules to electronic commerce. They agree to promote the development of electronic commerce between them, in particular by co-operating on the issues raised by electronic commerce under the provisions of this [Chapter/Sub-section].
2. The Parties confirm that this Agreement applies to electronic commerce. In the event of an inconsistency between this [Chapter/Sub-section] and another [Chapter/Sub-section] of this Agreement, the other [Chapter/Sub-section] shall prevail to the extent of the inconsistency.
3. Nothing in this [Chapter/Sub-section] imposes obligations on a Party to allow a delivery transmitted by electronic means except in accordance with the obligations of that Party under the other [Chapter/Sub-section] of this Agreement.

### **Article X-02: Customs Duties on Electronic Deliveries**

1. The Parties agree that a delivery transmitted by electronic means shall not be subject to customs duties, fees or charges.
2. For greater clarity, paragraph 1 does not prevent a Party from imposing internal taxes or other internal charges on a delivery transmitted by electronic means, provided that such taxes or charges are imposed in a manner consistent with the other [Chapter/Sub-section] of this Agreement.

### **Article X-03: Trust and Confidence in Electronic Commerce**

Each Party should adopt or maintain laws, regulations or administrative measures for the protection of personal information of users engaged in electronic commerce and, when doing so, shall take into due consideration international standards for data protection of relevant international organisations of which both Parties are a member.

### **Article X-04: General Provisions**

Considering the potential of electronic commerce as a social and economic development tool, the Parties recognize the importance of:

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- (a) clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;
- (b) interoperability, innovation and competition in facilitating electronic commerce;
- (c) facilitating the use of electronic commerce by small and medium sized enterprises.

### Article X-05: Dialogue on E-Commerce

1. Recognising the global nature of electronic commerce, the Parties agree to maintain a dialogue on issues raised by electronic commerce, which will *inter alia* address:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services,
- (b) the liability of intermediary service providers with respect to the transmission, or storage of information,
- (c) the treatment of unsolicited electronic commercial communications,
- (d) the protection of personal information and the protection of consumers and businesses from fraudulent and deceptive commercial practices in the sphere of electronic commerce.

2. The dialogue in Paragraph 1 may take the form of exchange of information on the Parties' respective laws, regulations, and other measures on these issues, as well as sharing experiences on the implementation of such laws, regulations, and other measures.

3. Recognizing the global nature of electronic commerce, the Parties affirm the importance of actively participating in multilateral fora to promote the development of electronic commerce.

### Article X-06: Definitions

For purposes of this Chapter:

**delivery** means a computer program, text, video, image, sound recording or other delivery that is digitally encoded; and

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**electronic commerce** means commerce conducted through telecommunications, alone or in conjunction with other information and communication technologies.

**Chapter X**  
**GOVERNMENT PROCUREMENT**

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**Article I Definitions**

For purposes of this Chapter:

- (a) **commercial goods or services** means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;
- (b) **Committee** means the Committee on Government Procurement established by Article XIX:1;
- (c) **construction service** means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);
- (d) **days** means calendar days;
- (e) **electronic auction** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;
- (f) **in writing** or **written** means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;
- (g) **limited tendering** means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- (h) **measure** means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
- (i) **multi-use list** means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;
- (j) **notice of intended procurement** means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;
- (k) **offset** means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as

the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

- (l) **open tendering** means a procurement method whereby all interested suppliers may submit a tender;
- (m) **person** means a natural person or a juridical person;
- (n) **procuring entity** means an entity covered under Annex X-01, X-02 or X-03;
- (o) **qualified supplier** means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;
- (p) **selective tendering** means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;
- (q) **services** includes construction services, unless otherwise specified;
- (r) **standard** means a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;
- (s) **supplier** means a person or group of persons that provides or could provide goods or services; and
- (t) **technical specification** means a tendering requirement that:
  - (i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
  - (ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

## **Article II    Scope and Coverage**

### *Application of Chapter*

1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

2. For the purposes of this Chapter, covered procurement means procurement for governmental purposes:
  - (a) of goods, services, or any combination thereof:
    - (i) as specified in each Party's annexes to this Chapter; and
    - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
  - (b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;
  - (c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's annexes to this Chapter, at the time of publication of a notice in accordance with Article VI;
  - (d) by a procuring entity; and
  - (e) that is not otherwise excluded from coverage in paragraph 3 or a Party's annexes to this Chapter.
3. Except where provided otherwise in a Party's annexes to this Chapter, this Chapter does not apply to:
  - (a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
  - (b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
  - (c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
  - (d) public employment contracts;
  - (e) procurement conducted:
    - (i) for the specific purpose of providing international assistance, including development aid;

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- (ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
- (iii) under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.

4. The procurement subject to the rules of this chapter shall be all procurement covered by each Party's following Annexes and any note attached thereto:

- (a) in Annex X-01, the central government entities whose procurement is covered by this Chapter;
- (b) in Annex X-02, the sub-central government entities whose procurement is covered by this Chapter;
- (c) in Annex X-03, all other entities whose procurement is covered by this Chapter;
- (d) in Annex X-04, the goods covered by this Chapter;
- (e) in Annex X-05, the services, other than construction services, covered by this Chapter;
- (f) in Annex X-06, the construction services covered by this Chapter; and
- (g) in Annex X-07, any General Notes.

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's annexes to this Chapter to procure in accordance with particular requirements, Article IV shall apply *mutatis mutandis* to such requirements.

### Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

- (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and



- (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
  - (i) premiums, fees, commissions and interest; and
  - (ii) where the procurement provides for the possibility of options, the total value of such options.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring contracts" the calculation of the estimated maximum total value shall be based on:

- (a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or
- (b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

- (a) in the case of a fixed-term contract:
  - (i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or
  - (ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;
- (b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and
- (c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

### Article III Security and General Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent a Party from imposing or enforcing measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.

### Article IV General Principles

#### *Non-Discrimination*

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favourable than the treatment the Party, including its procuring entities, accords to [EU: its own] [CAN: revised GPA text is: domestic] goods, services and [EU: locally established] suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

*Use of Electronic Means*

3. When conducting covered procurement by electronic means, a procuring entity shall:
- (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
  - (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

*Conduct of Procurement*

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:
- (a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;
  - (b) avoids conflicts of interest; and
  - (c) prevents corrupt practices.

*Rules of Origin*

5. For purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

*Offsets*

6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

*Measures Not Specific to Procurement*

7. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

**Article V Information on the Procurement System**

1. Each Party shall:

- (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and
- (b) provide an explanation thereof to the other Party, on request.

2. Each Party shall list, in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*]:

[Note: The nomenclature of annexes and (possibly) appendices will be discussed once a general decision on the structure of the CETA will have been agreed.]

- (a) the electronic or paper media in which the Party publishes the information described in paragraph 1;
- (b) the electronic or paper media in which the Party publishes the notices required by Articles VI, VIII:7 and XV:2; and
- (c) the website address or addresses where the Party publishes:
  - (i) its procurement statistics pursuant to Article XV:5; or
  - (ii) its notices concerning awarded contracts pursuant to Article XV:6.

3. Each Party shall promptly notify the Committee of any modification to the Party's information listed in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*].

**Article VI Notices**

*Notice of Intended Procurement*

[CAN: 1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*], except in the circumstances described in Article XII. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice.

The notices shall:

- (a) for procuring entities covered under Annex X-01, be accessible by electronic means free of charge through a single point of access, for at least any minimum period of time specified in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*]; and
- (b) for procuring entities covered under Annex X-02 or 3, where accessible by electronic means, be provided, at least, through links in a gateway electronic site that is accessible free of charge.

Parties, including their procuring entities covered under Annex X-02 or X-03, are encouraged to publish their notices by electronic means free of charge through a single point of access.]

[EU: 1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances described in Article XII.

All the notices of intended procurement shall be directly accessible by electronic means free of charge through a single point of access. In addition, the notices may also be published in an appropriate paper medium. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice.

The appropriate paper and electronic medium shall be listed by each Party in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*].

2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

- (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

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- (b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
- (c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;
- (d) a description of any options;
- (e) the time-frame for delivery of goods or services or the duration of the contract;
- (f) the procurement method that will be used and whether it will involve negotiation or electronic auction;
- (g) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (h) the address and the final date for the submission of tenders;
- (i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than [CAN: the official languages that are applicable to the procuring entity] [EU: *revised GPA text is: an official language of the Party of the procuring entity*];
- (j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;
- (k) where, pursuant to Article VIII, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and
- (l) an indication that the procurement is covered by this Chapter.

### *Summary Notice*

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in English or French. The summary notice shall contain at least the following information:

- (a) the subject-matter of the procurement;

- (b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and
- (c) the address from which documents relating to the procurement may be requested.

*Notice of Planned Procurement*

4. Procuring entities are encouraged to publish in the appropriate [CAN: *revised GPA text is: paper or electronic*] [EU: electronic, and, where available, paper] medium listed in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*] as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). [EU: The notice of planned procurement shall also be published in the single electronic gateway site listed in Annex X-X] The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Annex X-02 or 3 may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

**Article VII Conditions for Participation**

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

- (a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party;
- (b) may require relevant prior experience where essential to meet the requirements of the procurement; and
- (c) shall not require prior experience in the territory of the Party to be a condition of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

- (a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and
- (b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

- (a) bankruptcy;
- (b) false declarations;
- (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- (d) final judgments in respect of serious crimes or other serious offences;
- (e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or
- (f) failure to pay taxes.

#### **Article VIII Qualification of Suppliers**

##### *Registration Systems and Qualification Procedures*

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.
2. Each Party shall ensure that:
  - (a) its procuring entities make efforts to minimize differences in their qualification procedures; and
  - (b) where its procuring entities maintain registration systems, the entities make efforts to minimize differences in their registration systems.
3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

##### *Selective Tendering*



4. Where a procuring entity intends to use selective tendering, the entity shall:
  - (a) include in the notice of intended procurement at least the information specified in Article VI:2(a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and
  - (b) provide, by the commencement of the time-period for tendering, at least the information in Article VI:2 (c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article X:3(b).
5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.
6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

*Multi-Use Lists*

7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:
  - (a) published annually; and
  - (b) where published by electronic means, made available continuously,in the appropriate medium listed in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*].
8. The notice provided for in paragraph 7 shall include:
  - (a) a description of the goods or services, or categories thereof, for which the list may be used;
  - (b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;
  - (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

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- (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and
- (e) an indication that the list may be used for procurement covered by this Chapter.

9. Notwithstanding paragraph 7, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

- (a) states the period of validity and that further notices will not be published; and
- (b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time-period provided for in Article X:2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

[CAN: *Annex X-02 and Annex X-03 Entities*]

[EU: *Annex X-03 Entities*]

12. A procuring entity covered under Annex [CAN: X-02 or X-03] [EU: Annex X-03] may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

- (a) the notice is published in accordance with paragraph 7 and includes the information required under paragraph 8, as much of the information required under Article VI:2 as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

- (b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article VI:2, to the extent such information is available.

13. A procuring entity covered under Annex [CAN: X-02 or X-03] [EU: Annex X-03] may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

*Information on Procuring Entity Decisions*

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

15. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

**Article IX Technical Specifications and Tender Documentation**

*Technical Specifications*

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

- (a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
- (b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

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4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

### *Tender Documentation*

7. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

- (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;
- (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;
- (c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
- (d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;
- (e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

- (f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorized to be present;
- (g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and
- (h) any dates for the delivery of goods or the supply of services.

8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

10. A procuring entity shall promptly:

- (a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;
- (b) provide, on request, the tender documentation to any interested supplier; and
- (c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

#### *Modifications*

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

- (a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

- (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

**Article X Time-Periods**

*General*

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

- (a) the nature and complexity of the procurement;
- (b) the extent of subcontracting anticipated; and
- (c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

Such time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.

*Deadlines*

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8 a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

- (a) in the case of open tendering, the notice of intended procurement is published; or
- (b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 10 days where:

- (a) the procuring entity has published a notice of planned procurement as described in Article VI:4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
  - (i) a description of the procurement;
  - (ii) the approximate final dates for the submission of tenders or requests for participation;
  - (iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;
  - (iv) the address from which documents relating to the procurement may be obtained; and
  - (v) as much of the information that is required for the notice of intended procurement under Article VI:2, as is available;
- (b) the procuring entity, for contracts of a recurring nature, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or
- (c) a state of urgency duly substantiated by the procuring entity renders the time-period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

- (a) the notice of intended procurement is published by electronic means;
- (b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
- (c) the entity accepts tenders by electronic means.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering established in accordance with paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, where a procuring entity

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purchases commercial goods or services, or any combination thereof, it may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time-period established in accordance with paragraph 3 to not less than 10 days.

8. Where a procuring entity covered under Annex X-02 or X-03 has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

### **Article XI Negotiation**

1. A Party may provide for its procuring entities to conduct negotiations:
  - (a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article VI:2; or
  - (b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.
2. A procuring entity shall:
  - (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and
  - (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

### **Article XII Limited Tendering**

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles VI through VIII, IX (paragraphs 7 through 11), X, XI, XIII and XIV only under any of the following circumstances:

- (a) where:
  - (i) no tenders were submitted or no suppliers requested participation;
  - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;



- (iii) no suppliers satisfied the conditions for participation; or
  - (iv) the tenders submitted have been collusive,
- provided that the requirements of the tender documentation are not substantially modified;
- (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
    - (i) the requirement is for a work of art;
    - (ii) the protection of patents, copyrights or other exclusive rights; or
    - (iii) due to an absence of competition for technical reasons;
  - (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:
    - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
    - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
  - (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
  - (e) for goods purchased on a commodity market;
  - (f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

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- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or
  - (h) where a contract is awarded to a winner of a design contest provided that:
    - (i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and
    - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.
- [CAN: (i) where a procuring entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest.]

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

### Article XIII Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

- (a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) any other relevant information relating to the conduct of the auction.

### Article XIV Treatment of Tenders and Awarding of Contracts

#### *Treatment of Tenders*

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1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.
3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

### *Awarding of Contracts*

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.
5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:
  - (a) the most advantageous tender; or
  - (b) where price is the sole criterion, the lowest price.
6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.
7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

## **Article XV Transparency of Procurement Information**

### *Information Provided to Suppliers*

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article XVI, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

*Publication of Award Information*

2. Not later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Annex X [CAN: *revised GPA text is "Information on the Procurement System"*]. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- (a) a description of the goods or services procured;
- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;
- (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
- (e) the date of award; and
- (f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article XII, a description of the circumstances justifying the use of limited tendering.

*Maintenance of Documentation, Reports and Electronic Traceability*

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

- (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article XII; and
- (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

*Collection and Reporting of Statistics*

4. Each Party shall collect and report to the Committee statistics on its contracts covered by this Chapter. Each report shall cover one year and be submitted within two years of the end of the reporting period, and shall contain:

- (a) for Annex X-01 procuring entities:
  - (i) the number and total value, for all such entities, of all contracts covered by this Chapter;
  - (ii) the number and total value of all contracts covered by this Chapter awarded by each such entity, broken down by categories of goods and services according to an internationally recognized uniform classification system; and
  - (iii) the number and total value of all contracts covered by this Chapter awarded by each such entity under limited tendering;
- (b) for Annex X-02 and X-03 procuring entities, the number and total value of contracts covered by this Chapter awarded by all such entities, broken down by Annex; and
- (c) estimates for the data required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, where it is not feasible to provide the data.

5. Where a Party publishes its statistics on an official website, in a manner that is consistent with the requirements of paragraph 4, the Party may, instead of reporting to the Committee, provide a link to the website, together with any instructions necessary to access and use such statistics.

6. Where a Party requires notices concerning awarded contracts, pursuant to paragraph 2, to be published electronically and where such notices are accessible to the public through a single database in a form permitting analysis of the covered contracts, the Party may, instead of reporting to the Committee, provide a link to the website, together with any instructions necessary to access and use such data.

[Note: Negotiators agree in principle on the above language. Minor modifications may be required based on the outcome of the negotiations of Article XVIII and Article XIX of this Chapter.]

## **Article XVI Disclosure of Information**

### *Provision of Information to Parties*

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would

prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

*Non-Disclosure of Information*

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:

- (a) would impede law enforcement;
- (b) might prejudice fair competition between suppliers;
- (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
- (d) would otherwise be contrary to the public interest.

**Article XVII Domestic Review Procedures**

[EU: *additional paragraph 1*

1. Each Party shall ensure that its procuring entities listed in the annexes to this Chapter comply with the provisions of this Chapter in conducting covered procurements]

[EU Comment at Round 6: Verify Canada's implementation of domestic review procedures at sub-federal level.]

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

- (a) a breach of the Chapter; or
- (b) where the supplier does not have a right to challenge directly a breach of the Chapter under the domestic law of a Party, a failure to comply with a Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a

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breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

- (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
- (b) the participants to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;
- (c) the participants shall have the right to be represented and accompanied;
- (d) the participants shall have access to all proceedings;
- (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and
- (f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

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- (a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and
- (b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

### Article XVIII Modifications and Rectifications to Coverage

#### *Notification of Proposed Modification*

[CAN:

#### *\* Notification of Modification \**

1. A Party may modify an Annex to this Chapter.
2. When a Party modifies an Annex to this Chapter, the Party shall:
  - (a) notify the other Party in writing; and
  - (b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.
3. Notwithstanding subparagraph 2(b), a Party need not provide compensatory adjustments if:
  - (a) the modification in question is minor or a rectification of a purely formal nature; or
  - (b) the modification covers an entity over which the Party has effectively eliminated its control or influence.
4. If the other Party disputes that:
  - (a) an adjustment proposed under paragraph 2(b) is adequate to maintain a comparable level of mutually agreed coverage;
  - (b) the modification is minor or a rectification under subparagraph 3(a); or



- (c) the modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 3(b),

it must object in writing within 30 days of receipt of the notification referred to in subparagraph 2(a) or be deemed to have accepted the adjustment or modification, including for the purposes of Chapter X (Dispute Settlement).

5. Notwithstanding paragraph 4, a Party may modify an Annex to this Chapter.]

[Note: Parties agree that the procedure for modifications and rectifications for coverage shall be adapted to be suitable for a bilateral agreement. At Round 2 Canada submitted a non-paper on modified procedures for modifications and rectifications for coverage. This proposal has been introduced into the draft text in anticipation of Round V.]

## Article XIX Institutions

### *Committee on Government Procurement*

1. There shall be a Committee on Government Procurement composed of representatives from each Party. The Committee shall meet as necessary for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Chapter or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.

2. The Committee shall meet, upon request of a Party, to:

- (a) consider issues regarding public procurement that are referred to it by a Party [CAN: including emerging horizontal issues such as sustainability and social criteria in procurement policies];
- (b) exchange information relating to the public procurement opportunities in each Party; and
- (c) discuss any other matters related to the operation of this Chapter.

[CAN:

- (d) consider and recommend coordinated activities to facilitate access for suppliers to procurement opportunities in the territory of each Party. Such activities may include information sessions, improved electronic access to publicly-available information on each Party's procurement regime, and facilitating access for small and medium-sized enterprises. ]

3. [EU: *the revised GPA text is:* The Committee shall receive annually statistics from each Party] [CAN: Each Party shall submit statistics] relevant to the procurement covered by this Chapter, as established in Article XV, [CAN: annually to the Committee].

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[CAN:

4. Each Party shall submit notifications on modifications or rectifications as well as any objections to notifications to the Committee, as established in Article XVIII.]

[Note: The proposals by Canada reflect Canada's non-paper submitted on March 15, 2010 on activities of the Committee.]

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## INTELLECTUAL PROPERTY

### Article 1 Objectives

The objectives of this chapter are to:

- (a) facilitate the production and commercialization of innovative and creative products, and the provision of services, between the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

### Sub-Section 1 Principles

### Article 2 Nature and Scope of Obligations

The provisions of this chapter shall complement the rights and obligations between the Parties under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter called TRIPS Agreement).

### Article 3 Public Health Concerns

1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.
2. The Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.

### Sub-Section 2 Standards Concerning Intellectual Property Rights

### Article 5 Copyright and Related Rights

#### *Article 5.1 – Protection Granted*

1. The Parties shall comply with the Berne Convention for the Protection of Literary and Artistic Works (1886, last amended in 1979) [EU: , the WIPO Copyright Treaty – WCT (Geneva, 1996), and the WIPO Performances and Phonograms Treaty – WPPT

(Geneva, 1996)]. The Parties shall comply with Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).

2. The moral rights of the authors [EU: and performers] shall be protected in accordance with Article 6*bis* of the Berne Convention for the Protection of Literary and Artistic Works [EU: and Article 5 of the WIPO Performances and Phonograms Treaty (WPPT)].

3. The Parties shall confine limitations or exceptions to certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holder.

4. Notwithstanding paragraph 3, with respect to related rights, the Parties may provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention.

**[EU: Article 5.5 – Co-operation on Collective Management of Rights]**

The Parties shall endeavour to facilitate the establishment of arrangements between their respective collecting societies with the purpose of mutually ensuring easier access and delivery of works and protected subject matter between the territories of the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works or other protected subject matters. The Parties shall endeavour to achieve a high level of rationalisation and to improve transparency with regard to the execution of the tasks of their respective collecting societies.]

**[EU: Article 5.6 – Resale Rights]**

1. The Parties shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.

3. The Parties may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and the resale price does not exceed a certain maximum amount.

4. The royalty shall be payable by the seller. The Parties may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.]

***Article 5.7 - Fixation right***

1. For the purpose of this provision fixation means the embodiment of sounds and images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.
2. The Parties shall provide for performers the exclusive right to authorise or prohibit the fixation of their performances.
3. The Parties shall provide for broadcasting organisations the exclusive right to authorise or prohibit the fixation of their [CA: wireless] broadcasts [EU: , whether these broadcasts are transmitted by wire or over the air, including by cable or satellite].
4. A cable distributor shall not have the right provided for in paragraph 3 where it merely retransmits by cable the broadcasts of broadcasting organizations.

***Article 5.8 - Broadcasting and Communication to the Public***

1. The Parties shall provide performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.
  2. The Parties shall ensure that a single equitable remuneration is paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.
- [EU: 3. The Parties shall provide broadcasting organizations the exclusive right to authorize or prohibit the re-transmission of their broadcasts by any means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.]

***[EU: Article 5.9 - Distribution right]***

1. The Parties shall provide for authors, in respect of the original of their works or of copies thereof [CA: in the form of a tangible object], the exclusive right to authorise or prohibit any form of distribution to the public by sale or [EU: otherwise] [CA: other transfer of ownership].
2. The Parties shall provide the exclusive right to make available to the public, by sale or otherwise, the works indicated in points (a) to (d), including copies thereof:
  - (a) for performers, fixations of their performances [CA: fixed in phonograms];
  - (b) for phonogram producers, their phonograms;
  - (c) for producers of the first fixation of films, the original and copies of their films;

(d) for broadcasting organisations, fixations of their broadcasts as set out in Article 5.7 (3).]

**[CA: Article 5.X – Protection of Encrypted Program-Carrying Satellite Signals]**

Within one year from the date of entry into force of this Agreement, each Party shall make it:

- (a) a criminal offense to manufacture, import, sell, lease or otherwise make available a device or system that is primarily of assistance in decoding an encrypted program carrying satellite signal without the authorization of the lawful distributor of such signal; and
- (b) a civil offense to receive, in connection with commercial activities, or further distribute, an encrypted program carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal or to engage in any activity prohibited under subparagraph (a).

Each Party shall provide that any civil offense established under subparagraph (b) shall be actionable by any person that holds an interest in the content of such signal.]

**Article 5.10 – Reproduction right**

The Parties shall provide for the exclusive right to authorise or prohibit direct or indirect [EU: , temporary or permanent] reproduction by any means and in any form, in whole or in part:

- (a) for authors, of their works;
- [EU: (b) for performers, of fixations of their performances [CA: fixed in phonograms];]
- (c) for phonogram producers, of their phonograms;
- [EU: (d) for the producers of the first fixations of films, in respect of the original and copies of their films;]
- (e) for broadcasting organisations, of fixations of their broadcasts [EU:, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.]

**Article 5.11 – Right of communication to the public of works and right of making available to the public other subject-matter**

1. The Parties shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means [EU:, including the making available] to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

[EU: 2. The Parties shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:

- (a) for performers, of fixations of their performances [CA: fixed in phonograms];
- (b) for phonogram producers, of their phonograms;
- (c) for the producers of the first fixations of films, of the original and copies of their films;
- (d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. The Parties agree that the rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.]

**[EU: Article 5.12 – Exceptions and limitations]**

1. The Parties shall provide that temporary acts of reproduction referred to in Article 5.10, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:

- (a) a transmission in a network between third parties by an intermediary, or
- (b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance,

shall be exempted from the reproduction right provided for in Article 5.10.

2. Where the Parties provide for an exception or limitation to the right of reproduction pursuant to Article 5.10, they may provide similarly for an exception or limitation to the right of distribution as referred to in paragraph 1 of Article 5.9 to the extent justified by the purpose of the authorised act of reproduction.]

**[EU: Article 5.13 – Protection of Technological Measures]**

1. The Parties shall provide adequate legal protection and remedies against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.

2. The Parties shall provide adequate legal protection and remedies against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

- (a) are promoted, advertised or marketed for the purpose of circumvention of, or
- (b) have only a limited commercially significant purpose or use other than to circumvent, or
- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitation the circumvention of,

any effective technological measures.

3. For the purposes of Article 5, the expression 'technological measures' means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or any right related to copyright as provided for by law. Technological measures shall be deemed 'effective' where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.

4. Where Parties provide for exceptions and limitations to the rights set out in Article 5.10 and Article 5.11, they may also make provision to ensure that right holders make available to a beneficiary of an exception or limitation the means of benefiting from that exception or limitation – to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject matter concerned.]

**[EU: Article 5.14 – Protection of Rights Management Information]**

1. The Parties shall provide adequate legal protection and remedies against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information;
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under Article 5 from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by law.

2. For the purposes of this Agreement, the expression 'rights-management information' means any information provided by right holders which identifies the work or other subject-matter referred to in Article 5, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

3. Paragraph 2 shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in Article 5.]

**[CA: Article 5.15 – Camcording]**

Each Party shall provide for criminal procedures and penalties to be applied in accordance with its laws and regulations against any person who, without authorization of the theatre manager or the holder of copyright in a cinematographic work, makes a



copy of that work or any part thereof, from a performance of the work in a motion picture exhibition facility open to the public.]

**[EU: Article 5.16 – Liability of Intermediary Service Providers]**

**Article 5.16.1 – Use of Intermediaries' Services**

1. The Parties recognise that the services of intermediaries may be used by third parties for infringing activities. To ensure the free movement of information services and at the same time enforce intellectual property rights in the digital environment, the Parties shall provide for the following measures for intermediary service providers.
2. For the purposes of the function referred to in Article 5.16.2, service provider means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, and for the purpose of the functions referred to in Articles 5.16.3 and 5.16.4 service provider means a provider or operator of facilities for online services or network access.

**Article 5.16.2 – Liability of Intermediary Service Providers: "Mere Conduit"**

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Parties shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:
  - (a) does not initiate the transmission;
  - (b) does not select the receiver of the transmission; and
  - (c) does not select or modify the information contained in the transmission.
2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.
3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

**Article 5.16.3 – Liability of Intermediary Service Providers: "Caching"**

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:
  - (a) the provider does not modify the information;
  - (b) the provider complies with conditions on access to the information;

- (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
  - (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
  - (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.
2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

***Article 5.16.4 – Liability of Intermediary Service Providers: Hosting***

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:
- (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
  - (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.
2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.
3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for the Parties of establishing procedures governing the removal or disabling of access to information.

***Article 5.16.5 – No General Obligation to Monitor***

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 5.16.2, 5.16.3 and 5.16.4, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.
2. The Parties may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.]

Article 6  
Trademarks

***Article 6.1 – International Agreements***

The Parties shall make all reasonable efforts to comply with the Singapore Treaty on the Law of Trademarks (2006) and to accede to the Protocol related to the *Madrid Agreement concerning the International Registration of Marks*.

***Article 6.2 – Registration Procedure***

The Parties shall provide for a system for the registration of trademarks in which reasons for the refusal to register a trademark shall be communicated in writing to the applicant who will have the opportunity to contest such refusal and to appeal a final refusal to a judicial authority. The Parties shall provide for the possibility to file oppositions either against trademark applications or against trademark registrations. The Parties shall provide a publicly available electronic database of trademark applications and trademark registrations.

***Article 6.3 – Exceptions to the Rights Conferred by a Trademark***

The Parties shall provide for the fair use of descriptive terms, including terms descriptive of geographical origin, as a limited exception to the rights conferred by a trademark. In determining what is fair use, account shall be taken of the legitimate interests of the owner of the trademark and of third parties. The Parties may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 7  
Geographical Indications

[CA:

1. In implementing their obligations under Articles 22, 23 and 24 of the TRIPS Agreement, the parties agree to the following.
2. The names listed in Annex I are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement.
3. The names listed in Annex I(a) are geographical indications which identify wines as originating, as specified in Annex I(a), in the territory of the European Union, or a region or locality in that territory.
4. The names listed in Annex I(b) are geographical indications which identify spirits as originating, as specified in Annex I(b), in the territory of the European Union, or a region or locality in that territory.
5. The names listed in Annex I(c) are geographical indications which identify wines as originating, as specified in Annex I(c), in the territory of Canada, or a region or locality in that territory.
6. The names listed in Annex I(d) are geographical indications which identify spirits as originating, as specified in Annex I(d), in the territory of Canada, or a region or locality in that territory.
7. The applicability of paragraphs (2) to (6) shall not be made subject to any application or opposition process.]<sup>51</sup>

[EU: *Article 7.1 – Protection of geographical indications for agricultural products, foodstuffs<sup>52</sup>, wines<sup>53</sup> and spirit drinks<sup>54</sup>*

1. Having examined the geographical indications of Canada listed in [Annex – agricultural products, foodstuff, wine, spirit drinks - Canada], which have been registered by Canada under [reference to Canadian legislation], the European Union undertakes to protect the geographical indications of Canada listed in [Annex – agricultural products, foodstuff, wine, spirit drinks - Canada] according to the level of protection laid down in this Article 7.

<sup>51</sup> Note: Annexes from Canadian GI proposal located at the end of this chapter.

<sup>52</sup> Agricultural products and foodstuffs in the meaning of this Article 7 are products falling within the scope of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

<sup>53</sup> Wines in the meaning of this Article 7 are products falling under heading 22.04 of the HS and which:  
(a) comply with Council Regulation (EC) 1234/2007 of 22 October 2007, Commission Regulation (EC) 606/2009 of 10 July 2009 and Commission Regulation (EC) 607/2009 of 14 July 2009, or legislation replacing them; or  
(b) [reference to Canadian legislation]

<sup>54</sup> Spirit drinks in the meaning of this Article 7 are products falling under heading 22.08 of the HS and which:  
(a) comply with Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008, and Commission Regulation (EEC) No 1014/90 of 24 April 1990, or legislation replacing them; or  
(b) [reference to Canadian legislation]

2. Having examined the geographical indications of the European Union listed in [Annex – agricultural products, foodstuff, wine – European Union], which have been registered by the European Union under Regulation (EC) No 510/2006 and Regulation (EC) No 1234/2007, Canada undertakes to protect the geographical indications of the European Union listed in [Annex – agricultural products, foodstuff, wine, spirit drinks – European Union] according to the level of protection laid down in this Article 7.
3. This Article 7.1 shall apply to geographical indications for wines and spirit drinks with respect to geographical indications not covered by Article 7.2.

**Article 7.2 – Protection of specific geographical indications for wines, aromatised wines<sup>55</sup> and spirit drinks**

1. In Canada, the geographical indications listed in [Annex – wines, aromatised wines, spirit drinks – European Union] shall be protected according to the level of protection laid down in this Article 7 for those products which use these geographical indications in accordance with the relevant laws of the European Union on geographical indications.
2. In the European Union, the geographical indications listed in [Annex – wines, aromatised wines, spirit drinks – Canada] shall be protected according to the level of protection laid down in this Article 7 for those products which use these geographical indications in accordance with the relevant laws of Canada on geographical indications.

*(Explanatory note: As far as geographical indications for wines and spirits are concerned, this Article would apply to those geographical indications and customary terms already covered by the agreement between the European Union and Canada on trade in wines and spirit drinks by the time the CETA enters into force.)*

**Article 7.3 – Right of use**

1. A name protected under this Article 7 may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirit drinks conforming to the corresponding specification.
2. Once a geographical indication is protected under this Article 7, the Parties shall not subject the use of such protected name of the other side to any registration of users, or further charges.

**Article 7.4 – Scope of protection**

1. Geographical indications referred to in Articles 7.1 and 7.2 as well as those added in line with Article 7.6 shall be protected against:
  - (a) any direct or indirect commercial use of a protected name:

<sup>55</sup> Aromatised wines in the meaning of this Article 7 are products falling under heading 22.05 of the HS and which:  
 (a) comply with Council Regulation (EEC) No 1601/1991 of 10 June 1991, or legislation replacing it; or  
 (b) [reference to Canadian legislation]

- A. for comparable products not compliant with the product specification of the protected name, or
- B. in so far as such use exploits the reputation of a geographical indication;
  - (b) any misuse, imitation or evocation<sup>56</sup>, even if the true origin of the product is indicated or if the protected name is translated or used in transcription or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar;
  - (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
  - (d) any other practice liable to mislead the consumer as to the true origin of the product.
- 2. Geographical indications protected under the provisions of this Article 7 in a non-latin alphabet, shall be protected together with their transcription in latin characters. This transcription may also be used for labelling purposes for the products concerned.
- 3. Protected names may not become generic.
- 4. (a) The Parties shall refuse to register or shall invalidate a trademark that corresponds to any of the situations referred to in paragraph (1) in relation to a protected geographical indication for like products, provided an application to register the trademark is submitted after the date of application for protection or recognition of the geographical indication in the territory concerned.
  - (b) For geographical indications referred to in Articles 7.1 and 7.2, the date of application for protection or recognition shall be the date of entry into force of this agreement.
  - (c) For geographical indications referred to in Article 7.6, the date of application for protection or recognition shall be the date of the transmission of a request to the other Party to protect a geographical indication.
- 5. The protection of a geographical indication under this Article is without prejudice to the continued use of a trademark which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of a Party before the date of the application for protection or recognition of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation of the Party concerned.

<sup>56</sup> Is considered an evocation, notably, the illicit use in any way for products falling under heading 20.09 of the Harmonised System of the International Convention on the Harmonised Commodity Description and Coding System, done at Brussels on 14 June 1983, although only insofar as they are referred to wines falling under its heading No. 22.04, aromatised wines falling under its heading No. 22.05 and spirit drinks falling under its heading No. 22.08.

The date of application for protection or recognition of the geographical indication is determined in accordance with paragraph (4).

6. This Agreement shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead consumers.
7. Where the European Union or Canada, in the context of negotiations with a third country, proposes to protect a geographical indication of the third country, and the name is homonymous with a geographical indication of the other Party, the latter shall be informed and be given the opportunity to comment before the name becomes protected.
8. Nothing in this Article 7 shall oblige the European Union or Canada to protect a geographical indication which is not or ceases to be protected in its country of origin. The European Union and Canada shall notify each other if a geographical indication ceases to be protected in its country of origin.

***Article 7.5 – Enforcement of protection***

The Parties shall enforce the protection provided for in Articles 7.1 to 7.4 by appropriate administrative action by public authorities. They shall also enforce such protection at the request of an interested party.

***Article 7.6 – Addition of Geographical Indications for protection***

1. The European Union and Canada agree to add geographical indications to be protected to the Annexes referred to in Article 7.1 in accordance with the procedure set out in Article 7.7.
2. The European Union and Canada agree to process, without undue delay, the other's requests for adding geographical indications to be protected to the Annexes referred to in Article 7.1.
3. A name may not be registered as a geographical indication where it conflicts with the name of a plant variety, including a grape variety, or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.
4. If geographical indications are wholly or partially homonymous, protection shall be granted to each indication provided that it has been used in good faith and with due regard for local and traditional usage and the actual risk of confusion. Without prejudice to Article 23 of the TRIPS Agreement, the European Union and Canada shall mutually decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned.

5. The European Union and Canada shall have no obligation to protect a geographical indication where, in the light of a reputed or well-known trademark, protection is liable to mislead consumers as to the true identity of the product.
6. Without prejudice to paragraph 5, the Parties shall protect a geographical indication also where a prior trademark in the sense of Article 7.4 (4) exists.

***Article 7.7 – Joint Committee on geographical indications***

1. The Parties agree to set up a Joint Committee on geographical indications consisting of representatives of the European Union and Canada with the purpose of monitoring the development of this Article 7 and intensifying their co-operation and dialogue on geographical indications.
2. The Joint Committee may make recommendation and adopt decisions by consensus. It shall determine its own rules of procedure. It shall meet at the request of either the European Union or Canada, alternatively in the European Union and in Canada, at a time and a place and in a manner (which may include by videoconference) mutually determined by the two sides, but no later than 90 days after the request.
3. The Joint Committee may decide:
  - (a) to modify the Annexes referred to in Article 7.1, to add geographical indications that, after having completed the examination referred to, are also determined by the other side to constitute geographical indications and will be protected by that other side;
  - (b) to modify the Annexes referred to in Articles 7.1 and 7.2 and to remove individual geographical indications that cease to be protected in the Party of origin or that, in accordance with the applicable legislation, no longer meet the conditions to be considered a geographical indication in the other Party; and
  - (c) that a reference to legislation in this Article 7 should be taken to be a reference to that legislation as amended and replaced and in force at a particular date after the entry into force of this agreement.
4. The Joint Committee shall also see to the proper functioning of this Article 7 and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:
  - (a) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications;
  - (b) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Article 7;
  - (c) considering any matter arising from technical specifications or registered products; and
  - (d) exchanging information to optimise the operation of this agreement.



*Article 7.8 – General rules*

1. Unless otherwise provided for in this Agreement, importation, export and marketing of products referred to in Articles 7.1 and 7.2 shall be conducted in compliance with the laws and regulations applying in the territory of the importing Party.
2. Each Party may implement its undertakings by entering the geographical indications of the other Party into a domestic register or by means of any other method of implementation that meets the level of protection herein established.
3. The European Union and Canada may make publicly available the specifications or a summary thereof and contact points for control provisions corresponding to geographical indications of the other side protected pursuant to this Article 7.
4. Geographical indications protected under this Article 7 may only be cancelled by the Party in which the product originates.
5. A product specification referred to in this Article 7 shall be that approved, including any amendments also approved, by the authorities of the Party in the territory of which the product originates.
6. The provisions of this Article 7 are without prejudice to the right to seek recognition and protection of a geographical indication under the relevant legislation of the European Union or Canada.]

## Article 8

### Designs

#### *Article 8.1 – International Agreements*

The Parties shall make all reasonable efforts to accede to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (1999).

#### *[EU: Article 8.2 – Definitions]*

1. For the purpose of this agreement "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.
2. In this context, "product" means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get up, graphic symbols and typographic typefaces, but excluding computer programs.

"Complex product" means a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.]

#### *[EU: Article 8.3 – Requirements for Protection of Registered Designs]*

1. The Parties shall provide for the protection of independently created designs that are new or original. Parties may also require individual character as a condition to grant protection. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this article.
2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:
  - (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and
  - (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.
3. "Normal use" within the meaning of paragraph 2(a) shall mean use by the end user, excluding maintenance, servicing or repair work.]

#### *[EU: Article 8.4 – Rights Conferred by Registration]*

The owner of a registered design shall have the right to prevent third parties not having the owner's consent, at least from making, offering for sale, selling, importing, exporting, stocking or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the design, or are not compatible with fair trade practice.]

**[EU: Article 8.5 – Term of Protection]**

The duration of protection available in the Parties shall amount to at least five years. The right holder may request to have the term of protection renewed for at least one more period of five years with a maximum of up to a total term of 25 years from the date of filing.]

**[EU: Article 8.6 – Exceptions]**

1. The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.
2. Design protection shall not extend to designs dictated solely by technical or functional considerations. In particular a design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.
3. Notwithstanding paragraph 2, protection shall subsist in a design serving the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.
4. A design right shall not subsist in a design which is contrary to public order or to accepted principles of morality.]

**[EU: Article 8.7 – Relationship to Copyright]**

The subject matter of a design right may be protected under copyright law if the conditions for such protection are met. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.]

**Article 9  
Patents**

**Article 9.1 – International Agreements**

The Parties shall make all reasonable efforts to comply with the Patent Law Treaty (Geneva, 2000).

**[EU: Article 9.2 – Supplementary Protection Certificates]**

1. The Parties recognise that pharmaceutical and plant protection products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the

product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.

2. The Parties shall provide for a further period of protection for a pharmaceutical or plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in paragraph 1 second sentence above, reduced by a period of five years.

3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed five years.

4. A pharmaceutical product for which paediatric studies have been carried out may be entitled to a six months extension of the period mentioned in paragraphs 2 and 3.]

**[CA: Article 9.3 – Public Disclosure**

Each Party shall provide a 12-month grace period for patent applications without any formal requirements such as a declaration of disclosures made.]

**Article 10**

**Protection of undisclosed Data relating to Pharmaceutical Products**

[EU: "Pharmaceutical product" means any substance or combination of substances which may be administered to human beings with a view to making a medical diagnosis, to treating or preventing diseases or to restoring, correcting or modifying physiological functions or structures; pharmaceutical products, include, for example chemical medicinal products, biologics/biologicals (vaccines, (anti)toxins, blood, blood components, blood-derived products), herbal medicinal products, radiopharmaceuticals, recombinant products, gene therapy products, cell therapy products and tissue engineered products.]

[CA: "Pharmaceutical product" means a product containing a new entity, including a chemical drug, biologic drug, vaccine or radiopharmaceutical, which is manufactured, sold or represented for use in

(a) making a medical diagnosis, treating, mitigating or preventing disease, disorder, or abnormal physical state, or its symptoms, or

(b) restoring, correcting or modifying physiological functions.]

1. The Parties shall guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a pharmaceutical product on the market.

[EU: 2. For that purpose, the Parties shall ensure legislation that any information submitted to obtain an authorisation to put a pharmaceutical product on the market will

remain undisclosed to third parties and benefit from protection against unfair commercial use.

(a) during a period of at least eight years, starting from the date of grant of marketing approval in the Party concerned, no person or entity (public or private), other than the person or entity who submitted such undisclosed data, will, without the explicit consent of the person or entity who submitted this data, rely directly or indirectly on such data in support of an application for the authorisation to put a pharmaceutical product on the market;

(b) during a ten-year period, starting from the date of grant of marketing approval in the Party concerned, a marketing authorization granted for a subsequent application will not permit placing a pharmaceutical product on the market, unless the subsequent applicant submitted his/her own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant. Products registered without submission of such data would be removed from the market until the requirements were met.

3. In addition, the ten-year period referred to shall be extended to a maximum of eleven years if, during the first eight years after obtaining the authorisation in either of the Parties, the holder of the basic authorisation obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.]

[EU: Article 10 bis

**Patent linkage mechanisms**

If a Party relies on "patent linkage" mechanisms whereby the granting of marketing authorizations (or notices of compliance or similar concepts) for generic pharmaceutical products is linked to the existence of patent protection, it shall ensure that the patent holders and the manufacturers of generic medicines are treated in a fair and equitable way, including regarding their respective rights of appeal.]

**Article 11**

**Data Protection on Plant Protection Products**

1. The Parties shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.

2. The Parties shall recognise a temporary right to the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product.

During such period, the test or study report will not be used for the benefit of any other person aiming to achieve a marketing authorisation for plant protection product, except when the explicit consent of the first owner is proved. This right will be hereinafter referred as data protection.

[EU: 3. The test or study report should fulfil the following conditions:

- (a) be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops, and
- (b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.]

[CA: 3. The test or study report should be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops.]

4. The period of data protection shall be at least ten years starting at the date of the first authorisation in that Party with respect to data supporting the authorisation of a new active ingredient and data supporting the concurrent registration of the end-use product containing the active ingredient. The duration of protection may be extended in order to encourage the authorisation of low-risk plant protection products and minor uses.

5. The Parties may also establish data protection requirements or financial compensation requirements for data supporting the amendment or renewal of an authorisation.

6. Each of the Parties [CA: may][EU: shall] establish rules to avoid duplicative testing on vertebrate animals. Any applicant intending to perform tests and studies involving vertebrate animals [EU: shall] [CA: should be encouraged to] take the necessary measures to verify that those tests and studies have not already been performed or initiated.

7. The new applicant and the holder or holders of the relevant authorisations [EU: shall] [CA: should] be encouraged to make every effort to ensure that they share tests and studies involving vertebrate animals. The costs of sharing the test and study reports shall be determined in a fair, transparent and non-discriminatory way. The prospective applicant is only required to share in the costs of information he is required to submit to meet the authorisation requirements.

8. The holder or holders of the relevant authorisation shall have a claim on the prospective applicant for a fair share of the costs incurred by him. The Party may direct the parties involved to resolve the matter by formal and binding arbitration administered under national law.

[CA: Article X-1  
Trade Secrets

1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as:

- (a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known

among or readily accessible to persons that normally deal with the kind of information in question;

- (b) the information has actual or potential commercial value because it is secret; and
  - (c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.
2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.
3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.
4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions that dilute the value of the trade secrets.]

**[CA: Article X-2  
Data protection**

1. If a Party requires, as a condition for approving the marketing of pharmaceutical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, with a possible exception where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.
2. Each Party shall provide that for data subject to paragraph 1 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during [a reasonable period of time after their submission. For this purpose, a reasonable period shall mean] not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.
3. Where a Party relies on a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.]

**Article 12  
Plant Varieties**

The Parties shall co-operate to promote and reinforce the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (UPOV).

**Sub-Section 3**

**Enforcement of Intellectual Property Rights**

**Article 13  
General Obligations**

1. The Parties shall ensure that any procedures for the enforcement of intellectual property rights are fair and equitable, and are not unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. In implementing the provisions of this Chapter, each Party shall take into account the need for proportionality between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties.

3. Articles 14 to 23 relate to civil enforcement.

[EU: 4. For the purposes of Articles 14 to 23, unless otherwise mentioned, "intellectual property rights" should at least cover the following rights: copyright, rights related to copyright, rights of the creator of the topographies of a semiconductor product; trademark rights; design rights, patent rights, including rights derived from supplementary protection certificates; geographical indications; plant variety rights; and trade names in so far as these are protected as exclusive rights in the national law concerned.]

[CA: For the purposes of Articles 14 to 23, unless otherwise mentioned, intellectual property means [EU: at least] all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights.]

**Article 14  
Entitled Applicants**

The Parties shall recognise as persons entitled to seek application of the procedures and remedies referred to in Articles 15 to 23:



- (a) the holders of intellectual property rights in accordance with the provisions of the applicable domestic law,
- (b) all other persons authorised to use those rights, if such persons are entitled to seek relief in accordance with the provisions of the applicable domestic law,
- (c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, if such bodies are entitled to seek relief in accordance with the provisions of the applicable domestic law,
- (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, if such bodies are entitled to seek relief in accordance with the provisions of the applicable domestic law.

**Article 15  
Evidence**

Each Party shall ensure that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities shall have the authority to order, where appropriate and following an application, the production of relevant information, as provided for in the Party's domestic law, including banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

**Article 16  
Measures for Preserving Evidence**

1. The Parties shall ensure that, even before the commencement of proceedings on the merits of the case, the judicial authorities may, on application by an entity who has presented reasonably available evidence to support its claims that its intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.
2. Each Party may provide that such measures include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. The judicial authorities shall have the authority to take those measures, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

**Article 17**  
**Right of Information**

Without prejudice to its law governing privilege, the protection of confidentiality of information sources, or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority, upon a justified request of the right holder, to order the infringer or, in the alternative, the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. Such information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of such goods or services and of their channels of distribution.

**Article 18**  
**Provisional and Precautionary Measures**

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional and precautionary measures against a party, or where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement from occurring, and in particular, to prevent infringing goods from entering the channels of commerce.
2. [CA: At least in cases of copyright or related rights infringement and trademark counterfeiting,] each Party shall provide that, an interlocutory injunction may also be issued to order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.
3. [CA: At least in cases of copyright or related rights infringement and trademark counterfeiting,] each Party shall provide that, in the case of an alleged infringement committed on a commercial scale, the Parties shall ensure that, [EU: if the applicant demonstrates circumstances likely to endanger the recovery of damages,] the judicial authorities may order, in accordance with domestic law, the precautionary seizure of property of the alleged infringer, including the blocking of its bank accounts and other assets. To that end, the judicial authorities may order the communication of bank, financial or commercial documents, or access to relevant information, as appropriate.

**Article 19**  
**Other Remedies**

1. [CA: At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall] The Parties shall ensure that the judicial authorities may

order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the [EU: recall or] definitive removal from the channels of commerce, or the destruction, of goods that they have found to be infringing an intellectual property right. If appropriate, the judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods. In considering a request for such remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account.

2. The judicial authorities shall have the authority to order that those remedies shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

#### Article 20 Injunctions

1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to issue an order against a party to desist from an infringement, and *inter alia*, an order to that party or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent infringing goods from entering into the channels of commerce.

2. Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by government, or by third parties authorized by a government, without the authorization of the right holders to the payment of remuneration provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.

#### Article 21 Damages

1. Each Party shall provide that:

(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer who knowingly or with reasonable grounds to know, engaged in infringing activity of intellectual property rights to pay the right holder:

- (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; or
- (ii) the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in paragraph (i);

(b) in determining the amount of damages for infringements of intellectual property rights, its judicial authorities may consider, *inter alia*, any legitimate measure of value that may be submitted by the right holder, including lost profits.

[CA: For greater certainty, a Party may limit or exclude damages in certain special cases.]

Article 22  
Legal Costs

[CA: At least in cases of copyright or related rights infringement and trademark counterfeiting,]

Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings, that the prevailing party be awarded payment by the losing party of legal costs and other expenses, as provided for under that Party's law.

Article 23  
Presumption of Authorship or Ownership

For the purposes of civil proceedings involving copyright or related rights,

(a) for the author of a literary or artistic work, to be regarded as such, and consequently to be entitled to institute infringement proceedings it shall be sufficient in the absence of proof to the contrary, for his/her name to appear on the work in the usual manner. Proof to the contrary may include registration;

(b) the provisions under (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.]

[EU: Article 24  
Criminal Enforcement<sup>57 58</sup>

ARTICLE 28.1: CRIMINAL OFFENCES

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale.<sup>59</sup>

<sup>57</sup> The issue of the scope is still under examination by the Member States of the European Union.

<sup>58</sup> "counterfeit trademark goods" means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set forth in Sub-Section 3 (Enforcement of Intellectual Property Rights) are invoked; "pirated copyright goods" means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country in which the procedures set forth in Sub-Section 3 (Enforcement of Intellectual Property Rights) are invoked.

<sup>59</sup> Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties under this Article. A Party may comply

Such wilful trademark counterfeiting includes cases where distributors or retailers selling counterfeit products openly indicate that they are counterfeit.

For the purposes of this Article, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage.

2. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation<sup>60</sup> and domestic use, in the course of trade and on a commercial scale, of labels or packaging<sup>61</sup>:

- (a) to which a mark has been applied without authorization which is identical to or cannot be distinguished from a trademark registered in its territory; and
- (b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which such trademark is registered.

3. With respect to the offences specified in this Article for which a Party provides criminal procedures and penalties, that Party shall ensure that criminal liability for aiding and abetting is available under its law.

4. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability, which may be criminal, of legal persons for the offences specified in this Article for which the Party provides criminal procedures and penalties. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

#### ARTICLE 28.2: PENALTIES

For offences specified in paragraphs 1, 2 and 3 of Article 28.1 (Criminal Offences), each Party shall provide penalties that include imprisonment as well as monetary fines<sup>62</sup> sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity.

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with its obligation relating to importation and exportation of counterfeit trademark goods or pirated copyright goods by providing for distribution, sale or offer for sale of such goods on a commercial scale as unlawful activities subject to criminal penalties.

<sup>60</sup> A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

<sup>61</sup> A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trademark offence.

<sup>62</sup> It is understood that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

ARTICLE 28.3: SEIZURE, FORFEITURE AND DESTRUCTION

1. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 28.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and the assets derived from, or obtained directly or indirectly through the alleged infringing activity.

2. Where a Party requires the identification of items subject to seizure as a prerequisite for issuing an order referred to in paragraph 1, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.

3. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 28.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of all counterfeit trademark goods or pirated copyright goods. In cases where counterfeit trademark goods and pirated copyright goods are not destroyed, the competent authorities shall ensure that, except in exceptional circumstances, such goods shall be disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall ensure that the forfeiture or destruction of such goods shall occur without compensation of any sort to the infringer.

4. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 28.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and, at least for serious offences, of the assets derived from, or obtained directly or indirectly, through the infringing activity. Each Party shall ensure that the forfeiture or destruction of such materials, implements, or assets shall occur without compensation of any sort to the infringer.

5. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 28.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party may provide that its judicial authorities have the authority to order:

- a) the seizure of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through the allegedly infringing activity; and
- b) the forfeiture of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through the infringing activity.

ARTICLE 28.4: *EX OFFICIO* CRIMINAL ENFORCEMENT

Each Party shall provide that, in appropriate cases, its competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences specified in paragraphs 1, 2 and 3 of Article 28.1 (Criminal Offences) for which a Party provides criminal procedures and penalties.]

[EU: Article 25

**Border Measures**

1. The Parties shall provide procedures to enable a right holder, who has valid grounds for suspecting that the entry or exit of the customs territory or the placement, movement or presence in that territory under any customs procedure of goods infringing an intellectual property right may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release, or for the detention, of such goods.
2. The Parties shall provide that when the customs authorities, in the course of their actions and before an application has been lodged by a right holder or granted, have sufficient grounds for suspecting that goods infringe an intellectual property right, they may suspend the release of the goods or detain them in order to enable the right holder to submit an application for action in accordance with the previous paragraph.
3. The competent customs department shall inform the right-holder and the holder of the goods of its action and is authorised to inform them of the actual or estimated quantity and the actual or supposed nature of the goods whose release has been suspended or which have been detained.
4. With a view to establishing whether an intellectual property right has been infringed, the customs office shall inform the right-holder, at his request and if known, of the names and addresses of the consignee, the consignor or the holder of the goods and the origin and provenance of goods suspected of infringing an intellectual property right. The customs office shall give the applicant the opportunity to inspect goods whose release has been suspended or which have been detained. When examining goods, the customs office may take samples and hand them over or send them to the right-holder, at his express request, strictly for the purposes of analysis and to facilitate the subsequent procedure.
5. Any rights or obligations established in the implementation of Section 4 of Part III of the TRIPS Agreement concerning the importer shall be also applicable to the exporter or to the holder of the goods.
6. For the purposes of this provision, "goods infringing an intellectual property right" shall at least include goods infringing copyrights, trademarks, patents, plant variety rights, designs and geographical indications.]

Sub-Section 4

[EU: Article 26

**Co-operation**

*(Preliminary draft – may be amended)*

1. The Parties agree to co-operate with a view to supporting implementation of the commitments and obligations undertaken under this chapter. Areas of co-operation include, but are not limited to, the following activities:

- (a) exchange of information on the legal framework concerning intellectual property rights (including geographical indications) and relevant rules of protection and enforcement; exchange of experiences on legislative progress;
- (b) exchange of experiences on enforcement of intellectual property rights, including by customs, police, administrative and judiciary bodies;
- (c) capacity-building.

2. Without prejudice and as a complement to paragraph 1, the European Union and Canada agree to establish and maintain an effective dialogue on intellectual property issues ("*IP Dialogue*") to address topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and any other relevant issue.]

[CA: *ANNEX I(a)*

**GEOGRAPHICAL INDICATIONS OF WINES ORIGINATING IN THE  
EUROPEAN UNION**

NAME	TERRITORY, REGION OR LOCALITY

*ANNEX I(b)*

**GEOGRAPHICAL INDICATIONS OF SPIRITS ORIGINATING IN THE  
EUROPEAN UNION**

NAME	TERRITORY, REGION OR LOCALITY

*ANNEX I(c)*

**GEOGRAPHICAL INDICATIONS OF WINES ORIGINATING IN CANADA**

NAME	TERRITORY, REGION OR
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LIMITE

	LOCALITY

*ANNEX I(d)*

**GEOGRAPHICAL INDICATIONS OF SPIRITS ORIGINATING IN CANADA**

NAME	TERRITORY, REGION OR LOCALITY

]

## MONOPOLIES AND STATE ENTERPRISES

### [EU: Article X-01: Scope

The obligations of this Chapter apply to State Enterprises and Monopolies at all levels of government.]

### [EU: Article X-02: Principles

1. The Parties recognize that monopolies and state enterprises should not operate in a manner that creates obstacles to trade and investment. Therefore, they shall neither enact nor maintain in force any measure inconsistent with the rules contained in this Agreement.

2. The Parties confirm their rights and obligations under Article XVII of GATT 1994, its interpretative Notes and Supplementary Provisions and the Understanding on the Interpretation of Article XVII, as well as their existing rights and obligations under Article VIII and IX of GATS, which are hereby incorporated into and made part of this Agreement.]

### [CN: Article X-02] [EU: Article X-03]: Monopolies

1. [EU: Except as otherwise provided<sup>63</sup>], nothing in this Agreement shall be construed to prevent a Party from maintaining or designating a monopoly.

2. [CN: Where a Party intends to designate a monopoly and the designation may affect the interests of persons of another Party, the designating Party shall:

a) wherever possible, provide prior written notification to the other Party of the designation; and]

b) endeavour to introduce at the time of the designation such conditions on the operation of the monopoly as will [CN: minimize or eliminate any nullification or impairment of any benefits accruing to the other Party under this Agreement].

3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any [CN: privately-owned] monopoly [CN: that it designates and any government monopoly] that it maintains or designates:

a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it [CN: in connection

<sup>63</sup> This language would disappear in case the FTA does not contain language on monopolies anywhere else.

## LIMITE

with the monopoly good or service], such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;

b) except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d), acts solely in accordance with commercial considerations in its purchase or sale[EU:s of goods and provision of services] [CN: of the monopoly good or service in the relevant market], including with regard to price, quality, availability, marketability, transportation and other terms and conditions [CN: of purchase or sale];

[CN: c) provides non-discriminatory treatment to covered investments, to goods and to service providers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and

[EU: c) acts in a manner consistent with non-discriminatory treatment as defined in this Agreement and in particular provides non-discriminatory treatment to covered investments, including customers and providers of goods and services of the other Party; For greater clarity, the Parties confirm that national treatment shall mean, with respect to any monopoly whether at federal, provincial or local level, treatment no less favourable than the treatment that that monopoly accords to like, directly competitive or substitutable domestic goods and services, including those originating in the territory for which the monopoly has been granted exclusive or special rights or privileges.

d) [CN: does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect a covered investment.]

4. [CN: Paragraph 3 does not apply to procurement by governmental agencies of goods or services for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the provision of services for commercial sale.]

4. [EU: Paragraph 3 of this Article shall not affect the rights and obligations of the Parties under Chapter xx on Government Procurement.]

### [CN: Article X-03] [EU: Article X-04]: State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state enterprise.

2. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under [EU: this

Agreement ] [CN: Chapters XX (Investment) and XX (Financial Services)] wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

3. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the [EU: purchase and] sale of [CN: its] goods or services [CN: to covered investments]. [EU: For greater clarity, the Parties confirm that national treatment shall mean, with respect to any state enterprise whether at federal, provincial or local level, treatment no less favourable than the treatment that that monopoly accords to like, directly competitive or substitutable domestic goods or services, including those originating in the territory for which the state enterprise has been granted exclusive or special rights or privileges.]

[EU: 4. Each Party shall ensure that any state enterprise that it maintains or establishes acts solely in accordance with commercial considerations in its purchases or sales of goods and provision of services, including with regard to price, quality, availability, marketability, transportation and other terms and conditions];

**[CN: Article X-04] [EU: Article X-05]: Dispute Settlement**

[1. For the purposes of this Chapter, an investor may have recourse to investor-state dispute settlement pursuant to subparagraph X of Article X (Investment - Claim by an Investor of a Party on Its Own Behalf) or subparagraph X of Article X (Investment - Claim by an Investor of a Party on Behalf of an Enterprise) only for matters arising under subparagraph 3(a) of Article X-02 or paragraph 2 of Article X-03.]

**[CN: Article X-05] [EU: Article X-06]: Definitions**

For purposes of this Chapter:

**covered investment** means “covered investment” as defined in Article X (Investment – Definitions);

**designate** means to establish, designate, authorize, or to expand the scope of a monopoly to cover an additional good or service, after the date of entry into force of this Agreement;

**[CN: government monopoly]** means a monopoly that is owned, or controlled through ownership interests, by the federal government of a Party or by another such monopoly];

**in accordance with commercial considerations** means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

**[CN: market]** means the geographic and commercial market for a good or service];

[CN: **monopoly** means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;]

[EU: **monopolies and enterprises entrusted with special or exclusive rights** means entities including consortia or government agencies or marketing boards, at any level of government, that have been granted exclusive rights, special rights or privileges by a Party. This definition does not include entities that have been granted exclusive intellectual property rights solely by reason of such grant. This definition includes entities through which the central and sub-central authorities or other public bodies of any kind of a Party are in a position, in law or in fact, to supervise, determine or appreciably influence, either directly or indirectly, imports or exports between the Parties;]

**non-discriminatory treatment** means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and

[CN: **state enterprise** means, except as set out in Annex XY, an enterprise owned, or controlled through ownership interests, by a Party]

[EU: **state enterprise** means any public undertaking over which the public authorities of a Party at central or sub-central level may exercise directly or indirectly a dominant influence/control by virtue of their ownership of it, their financial participation therein, or the rules which govern it.]

**Annex XY**

**[CN: Country-Specific Definitions of State Enterprises**

For purposes of Article X-03(3), "state enterprise":

with respect to Canada, means a Crown corporation within the meaning of the *Financial Administration Act* (Canada), a Crown corporation within the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law.]

## COMPETITION

### ARTICLE VII. ARTICLE X-01: COMPETITION POLICY

1. The Parties recognize the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business conduct has the potential to distort the proper functioning of markets and undermine the benefits of trade liberalization.

2. Each Party shall take appropriate measures to proscribe anti-competitive business conduct, recognizing that such measures will enhance the fulfilment of the objectives of this Agreement.

3. The Parties shall cooperate on matters relating to proscribing anti-competitive business conduct in the free trade area in accordance with the *Agreement between the European Communities and the Government of Canada Regarding the Application of their Competition Laws*, entered into force on 17 June 1999, or any successor *Agreement*.

4. The measures referred to in paragraph 2 shall be consistent with the principles of transparency, non-discrimination and procedural fairness. Exclusions from the application of competition law shall be transparent. Each Party shall make available to the other Party public information concerning such exclusions provided under its competition laws.

5. In this Article, "anti-competitive business conduct" means anti-competitive agreements, concerted practices or arrangements by competitors; anti-competitive practices by an enterprise that is dominant in a market; and mergers with substantial anti-competitive effects.

[EU: Article X-02 Public enterprises, monopolies and enterprises entrusted with special or exclusive rights

Each Party shall ensure that public enterprises, monopolies and enterprises entrusted with special or exclusive rights are subject to their respective competition laws referred to above. The parties may not apply these laws in so far as their application obstructs the performance, in law or in fact, of the particular tasks assigned to the enterprises in question.]

### Article X-03: Dispute Settlement

## **LIMITE**

1. Neither Party may have recourse to state-to-state, investor-state, or any other dispute settlement procedure under this Agreement for any matter arising under this chapter.



## TRADE AND LABOUR

### CHAPTER X+1: TRADE AND LABOUR

**Article 1:** [CAN 2-07-2010 Objectives and Commitments]  
[EU 14-12-09 Right to regulate and levels of protection]

[CAN 2-07-2010 - *Canada's counter-proposal to EU proposal for Art 2(1) is to move it to this renamed Art 1:* The Parties recognise the value of international co-operation and agreements on employment and labour affairs as a response of the international community to economic, employment and social challenges and opportunities resulting from globalisation. [[EU 14-12-09 They commit to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all,]<sup>64</sup> and commit to consulting and co-operating as appropriate on trade-related labour and employment issues of mutual interest.

2. The Parties recognise the beneficial role that decent work, encompassing core labour standards, and high levels of labour protection, coupled with effective enforcement, can have on economic efficiency, innovation and productivity, including export performance, and they highlight the value of greater policy coherence in those areas. In this context, the Parties recognize the importance of social dialogue on labour matters among workers and employers, and their respective organizations, and governments, and commit to promotion of such dialogue in their territories.

3. Recognising the right of each Party to set its labour priorities, to establish its levels of labour protection compatible with its international commitments, including those in this Chapter, and to adopt or modify its relevant laws and policies, each Party shall strive to continue to improve those laws and policies with the goal of providing high levels of labour protection.<sup>65</sup>

**Article 2:** [CAN 2-07-2010: Obligations based on Multilateral labour standards]  
[EU 14-12-2009: Multilateral labour standards and agreements]

1. Each Party shall ensure that its labour law and practices embody and provide protection for the fundamental principles and rights at work, and reaffirm its commitment to respecting, promoting and realising such principles and rights [more broadly] in

<sup>64</sup> CANADA NOTE (2-07-2010): We are consulting internally on this, particularly with respect to the SD Chapter.

<sup>65</sup> Negotiators' Note: Subject to verification of coherence with Environment Chapter.

accordance with its obligations as member of the ILO and its commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998.

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

**[CAN 2-07-2010**

- (e) the prevention of occupational injuries and illnesses and compensation in cases of such injuries or illnesses;<sup>66</sup>
- (f) acceptable minimum employment standards for wage earners, including those not covered by collective agreements; and,
- (g) non-discrimination in respect of working conditions for migrant workers.]

**CAN 12-04-2011:** Any Canadian agreement on paragraphs 2, 3 and 4 of Article 2 is premised on a model that includes monetary assessments or other effective enforcement mechanism.

2. [EU 14-12-2009: Accordingly, ] Each Party [EU 14-12-2009: shall ratify, to the extent that it has not yet done so, and] shall effectively implement in its laws and practices, in its whole territory, the Fundamental ILO Conventions:

- Convention 87 concerning Freedom of Association and Protection of the Right to Organise,
- Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively;
- Convention 29 concerning Forced or Compulsory Labour,
- Convention 105 concerning the Abolition of Forced Labour,
- Convention 138 concerning Minimum Age for Admission to Employment,
- Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,
- Convention 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value,
- Convention 111 concerning Discrimination in Respect of Employment and Occupation.

[CAN 16-01-2011 3. **compromise proposal** Each Party shall effectively implement the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), including to formulate a national policy which promotes basic principles such as aiming to prevent accidents and injury arising out of or in the course of work, and the development of a national preventative safety and health culture where the principle of prevention is accorded the highest priority.]

[EU 16-01-2011 – **compromise in response to CAN proposal**: Each Party shall ensure that its labour law and practices embody and provide protection for the right to working conditions that respect the health and safety of workers. In this context, each Party shall, when preparing and implementing measures aimed at health protection and safety at work, take account of relevant scientific and technical information and related international standards, guidelines or recommendations if they exist, particularly if such measures may affect trade or investment between the Parties. Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing protective measures]

3. [EU 14-12-2009: The Parties reaffirm their commitments to effectively implementing the ILO Conventions that they have ratified.] The Parties will [EU 14-12-2009: regularly] exchange information on their respective situation and advancements as regards the ratification of [CAN 2-07-2010: fundamental and] priority ILO conventions as well as other conventions that are classified as up-to-date by the ILO.
4. [CAN 2-07-2010: For the purpose of this Article, a Party is considered to effectively implement a convention through laws, regulations, collective agreements or other practices or implementing measures that bring it into substantial conformity with the object and purpose of the convention and its provisions.]

### **Article 3: Upholding levels of protection**

1. The Parties recognise that it is inappropriate to encourage trade or foreign direct investment by lowering the levels of protection embodied in domestic labour laws and standards.
2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour laws, as an encouragement for trade or the establishment, acquisition, expansion or retention of an investment or an investor in its territory.

3. A Party shall not fail to effectively enforce its labour laws, through a sustained or recurring course of action or inaction, as an encouragement for trade or investment.

**Article 4: Enforcement procedures, Administrative proceedings and review of administrative action<sup>67</sup>**

**[CAN 2-07-2010:**

1. Each Party shall promote compliance with and effectively enforce its labour law by taking appropriate and timely government action, including
  - i) by establishing a regime that has proactive inspection elements and gives due consideration, in accordance with its law, to requests by interested persons<sup>68</sup> for an investigation of an alleged contravention of the Party's labour law, and
  - ii) by initiating proceedings to seek appropriate sanctions or remedies for such contraventions; and

**[EU 18/10/2010** 1. In connection with the obligations in article 3, e]

**[CAN 2-07-2010: 2. E]** ach Party shall ensure that administrative and judicial procedures are available to persons with a legally recognized interest in a particular matter under its domestic law, in order to permit effective action against infringements of its labour laws, including appropriate remedies for violations of such laws.

**EU 18/10/2010 2.] [CAN 2-07-2010: 3.]** Each Party shall, within the framework of its legal system, ensure that the procedures referred to in **[EU 18/10/2010 paragraph 1] [CAN 2-07-2010: subparagraph 1 (b) and paragraph 2]** are not unnecessarily complicated or prohibitively costly, do not entail unreasonable time limits or unwarranted delays, provide injunctive relief, where appropriate, and are fair and equitable, including by:

- a. providing defendants with reasonable notice when a procedure is initiated, including a description of the nature of the proceeding and the basis of the claims;
- b. affording the parties to the procedures a reasonable opportunity to support or defend their respective positions, including by presenting information or evidence, prior to any final decision;
- c. providing that final decisions are made in writing and give reasons as appropriate to the case; and

- d. allowing the parties to an administrative proceeding an opportunity for review of final administrative decisions within a reasonable time by a tribunal established by law, with appropriate guarantees of independence and impartiality of decision-makers.

**ARTICLE 5: [PUBLIC INFORMATION AND AWARENESS]**

1. Each Party, as well as complying with Art X.01 of Transparency Chapter, shall encourage public debate with and among non-State actors as regards the development and definition of policies that may lead to the adoption by public authorities of labour laws and standards.
2. Each Party shall promote public awareness of its labour laws and standards, as well as enforcement and compliance procedures, including by ensuring the availability of information and by taking steps to further the knowledge and understanding of workers, employers and their representatives.

**[CAN 2-07-2010 Proposes move 5(2) to Sustainable Development provisions, with language like that proposed by EU April 9 but broaden coverage to that being developed by Canada. ]**

**[EU 14-12-2009 Article 5: Trade favouring labour development and protection**

2. In order to enhance the mutual supportiveness of their trade, investment and labour objectives, the Parties agree to encourage voluntary best practices and initiatives, including codes of conduct, social labelling and certification schemes operating under criteria of transparency and social partners' involvement, and comprising appropriate mechanisms for evaluation and verification of their implementation, and to promote and facilitate international stakeholder initiatives for the convergence of such instruments.]

**[CAN 2-07-2010 CAN proposes that EU Art 6 be replaced by new Art 2 regarding occupational health and safety.]**

**[EU 14-12-2009 Article 6: Scientific and technical information<sup>69</sup>**

Each Party shall, when preparing and implementing measures aimed at health protection and safety at work which may affect trade between the Parties or foreign direct investment, take account of relevant scientific and technical information and related international standards, guidelines or recommendations if they exist, and of the precautionary principle. Where there are threats of serious or

irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing protective measures.]

**Article 7: Cooperative activities**

1. The Parties commit to cooperate for the promotion of the objectives of this Chapter through actions such as:

- exchange of information on best practices on issues of common interest and on relevant events, activities, and initiatives organized in their respective territories;
- cooperation in international fora dealing with issues relevant for trade and labour and employment, including in particular the WTO and the ILO;
- the international promotion of Fundamental Rights at Work and their effective application, and the ILO Decent Work Agenda;
- 
- dialogue and information sharing on the labour provisions in the context of their respective trade agreements, and their implementation;
- exploring collaboration in initiatives vis-a-vis third countries;
- other forms of cooperation as the Parties may deem appropriate.

2. In identifying areas for cooperation, and in carrying out cooperative activities, the Parties will consider any views provided by their worker and employer representatives and civil society.

**Article 8: Institutional mechanisms <sup>6</sup>**

1. Each Party shall designate one office which shall serve as a Point of Contact with the other Party for the purposes of implementing this Chapter, including with regard to:
  - (a) cooperative programs and activities in accordance with Article 7;
  - (b) the receipt of submissions and communications under Article 9; and
  - (c) information to be provided to the other Party, the review panels and the public.

i.

2. The Parties hereby establish a [NAME TO BE DETERMINED] to discuss matters of common interest, to oversee the implementation of this Chapter and review progress under it, or to address any other matter within the scope of this Chapter as they jointly decide. The [NAME] shall be comprised of high level representatives of the Parties responsible for matters covered by this Chapter.<sup>70</sup> Unless the Parties otherwise jointly decide, there shall be a meeting within one year, and thereafter as often as the Parties consider necessary, and each meeting shall include a session with the public to discuss matters relating to the implementation of this Chapter. [CAN 10-12-2010: In addition, within five years after the date of entry into force of the Agreement or such other period as may be directed by the NAME, the NAME shall jointly or independently conduct an impact assessment of the Chapter, including its operation and effectiveness, particularly the degree to which progress has been made in implementing its objectives and obligations. Such assessment may call upon one or more independent experts.]

3. Each Party shall consult a domestic labour or sustainable development advisory group(s), or establish new ones when they do not exist, to provide views and advice on issues relating to this Chapter. Such groups may submit opinions and make recommendations on any matter related to this Chapter on their own initiative. The domestic advisory group(s) comprise(s) independent representative organisations of civil society in a balanced representation of employers, unions, labour and business organisations, as well as other relevant stakeholders as appropriate.

#### Article 9: TITLE TO BE DETERMINED

The NAME shall promote transparency and public participation. To this end:

- (a) all decisions and reports that the NAME may adopt shall be made public, unless the NAME decides otherwise;
- (b) the NAME shall present updates on matters related to this Chapter, including its implementation, to the Civil Society Forum referred to in [Article]. Any views or opinions of the Civil Society Forum may be submitted directly to the Parties, or through the domestic advisory group(s). The NAME shall report annually on the follow-up given to such communications;
- (c) each Party shall be open to receive and shall give due consideration to submissions from the public on matters related to this Chapter, including communications on implementation concerns; each Party shall inform its

<sup>70</sup> Canada Negotiator's Note 18/10/2010: Need to finalize internal verification regarding representatives.

domestic advisory group(s) of such communications; the NAME shall report annually on matters it may address pursuant to such communications

#### ARTICLE 11: Government Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The request shall present the matter clearly, identifying the questions at issue and providing a brief summary of any claims under this Chapter. Consultations shall commence promptly after a Party delivers a request for consultations.
2. During consultations, each Party shall provide the other with sufficient information in its possession to allow a full examination of the matters raised, [subject to any domestic legislation regarding confidential personal and commercial information]<sup>71</sup>.
3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

[EU 18/01/2011: 4. The Parties shall take into account the activities of the International Labour Organisation so as to promote greater cooperation and coherence between the work of the Parties and that Organisation. In matters related to the respect of multilateral labour standards and agreements as set out in Article 2, the Parties may seek advice from the ILO.]

4. If a Party considers that the matter needs further discussion, that Party may request that [NAME] be convened to consider the matter by delivering a written request to the contact point of the other Party. The [NAME] shall convene promptly and endeavour to agree on a resolution of the matter. Where appropriate, it shall seek the advice of the Parties' domestic advisory group(s).

[CANADA 18/10/2010<sup>72</sup>: either Party may call upon one or more independent experts to prepare a report. The Parties shall make every effort to agree upon the selection of the expert or experts and shall cooperate with the expert or experts in the preparation of the report. Any report shall be made public within 60 days of its receipt by the Parties.]

5. Any solutions or decisions on matters discussed under this Article shall be made publicly available.



<p><b>ARTICLE 13: Establishment and Conduct of Review Panel<sup>73</sup></b></p> <p>1. Following the conclusion of Ministerial Consultations, the Party that requested the consultations may request that a review panel be convened if the Party considers that:</p> <p>a) the matter is trade-related; and,</p> <p>b) the other Party has failed to comply with its obligations under this Chapter through:</p> <p style="padding-left: 40px;">i) failure to comply with its obligations under Articles 1 and 2 to the extent that they refer to the ILO 1998 Declaration; or</p> <p style="padding-left: 40px;">ii) a persistent pattern of failure to effectively enforce its labour law through appropriate government action, private rights of action, procedural guarantees, public information and awareness.</p> <p>2. Unless the Parties otherwise decide, a panel comprised of three independent experts, including a chairperson who is not a national of either Party, shall be established in a manner consistent with the criteria and procedures set out in Annex 2.</p> <p>3. Unless the Parties otherwise agree, the panel shall perform its functions in accordance with the provisions of this Part, Annex 2 and the Model Rules. The panel:</p> <p>a) shall determine, within 30 days of confirmation of its terms of reference, whether the matter is trade-related and shall cease its functions if it determines that the matter is not trade-related;</p> <p>b) shall provide the Parties with sufficient opportunity to make written and oral submissions</p>	<p><b>Article 12: Panel of Experts<sup>9</sup></b></p> <p>1. The provisions in Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement], as well as the Rules of Procedure in Annex X and the Code of Conduct in Annex Y, shall apply, except as otherwise provided in this Article.</p> <p>2. A Party may, 90 days after the delivery of a request for consultations under Article 9.1, request that a Panel of Experts be convened to examine a matter that has not been satisfactorily addressed through government consultations.</p> <p>3. The [Joint Body] shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 persons who are willing and able to serve as experts in Panel procedures. Each Party shall propose five individuals to serve as experts. The Parties shall also select five individuals who are not nationals of either Party and who shall act as chairperson to the Panel of experts. The [Joint Body] will ensure that the list is always maintained at this level.</p> <p>4. The list referred to in paragraph 3 shall comprise individuals with specialised knowledge or expertise in law, environmental issues addressed in this Chapter, or the resolution of disputes arising under international agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party, and shall comply with [the Code of Good Conduct].</p> <p>5. For matters arising under this Chapter, the Panel of Experts shall be composed of experts from the list referred to in paragraph 3, in accordance with the relevant provisions of Section</p>
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<p>to the panel;</p> <p>c) may invite or receive and consider written submissions and any other information from organisations, institutions, the public and persons with relevant information or expertise; and,</p> <p>d) shall hold proceedings that are open to the public, except to the extent necessary to protect information in accordance with Article 17 and the Model Rules of Procedure.</p> <p><b>ARTICLE 14: Review Panel Reports and Determinations</b></p> <p>1. The panel shall present to the Parties a report that:</p> <p>a) makes findings of fact;</p> <p>b) addresses the submissions and arguments of the Parties and any relevant information before it pursuant to subparagraph (3)(c) of Article 13;</p> <p>c) determines whether the Party that is the object of the review has engaged in non-compliance through failure to comply with its obligations under Articles 1 and 2 to the extent that they refer to the ILO 1998 Declaration or a persistent pattern of failure to effectively enforce its labour law through appropriate government action, private rights of action, procedural guarantees, public information and awareness, or any other determination requested in the terms of reference; and,</p> <p>d) makes recommendations for resolution of any non-compliance determined under subparagraph (c), which normally shall be that the Party that is the object of the review adopt and implement an action plan sufficient to remedy the pattern of non-compliance.</p> <p>2. The panel shall present its initial report to the Parties within 120 days after the last panelist is selected unless the panel extends the time period</p>	<p>3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement].</p> <p>6. In matters related to the respect of multilateral agreements as set out in Article 2, the Panel should seek advice from MEA bodies, and it shall rely on any pertinent available interpretative guidance, findings or decisions adopted in those bodies.</p> <p>7. The Panel of Experts shall issue to the Parties a report setting out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes. The Parties shall make the report publicly available within 15 days of its issuance.</p> <p>8. The Panel's report and recommendations shall not be binding on the Parties. The Parties shall endeavour to discuss appropriate measures to be implemented taking into account the Panel's report and recommendations. The Party concerned shall inform its advisory groups and the other Party of its decisions on any actions or measures to be implemented no later than three months after the public release of the report. The follow-up to the report and the recommendations of the Panel of Experts shall be monitored by the Board on Trade and Sustainable Development. The advisory bodies and the Civil Society Forum may submit observations to the Board on Trade and Sustainable Development in this regard.</p> <p>9. For greater certainty, a Party's decision not to follow or to depart from the Panel's report and recommendations shall not trigger the imposition of any economic penalties by the other Party.</p>
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by up to a further 60 days or the Model Rules of Procedure otherwise provide. If the panel extends the time period, it shall first give written notice to both Parties setting out the reasons for the extension of time.

3. Either Party may submit written comments to the panel on its initial report within 30 days of presentation of the report or within such other period as the Parties may agree. After considering such written comments, the panel, on its own initiative or on the request of either Party, may reconsider its report and make any further examination that it considers appropriate.

4. The Panel shall present to the Parties a final report within 60 days of the presentation of the initial report, unless the Parties otherwise agree. The final report shall be made public within 60 days of its receipt by the Parties.

5. If, in the final report, a review panel determines that there has been non-compliance within the meaning of subparagraph 1(c), the Parties may develop, within the following 90 days or such longer period as they may agree, a mutually satisfactory action plan to implement the panel's recommendations.

6. Following the expiry of the period set out in paragraph 5, if the Parties were unable to agree on an action plan or the Party subject to review is failing to implement the action plan according to its terms, the requesting Party may request in writing that the panel be reconvened with a view to determining whether or not a monetary assessment needs to be set and paid in accordance with Annex 3.

## ANNEX 2

### PROCEDURES RELATED TO REVIEW PANELS

#### Qualifications of Panelists

<p>1. Panelists shall:</p> <p>a) be chosen on the basis of expertise in labour matters or other appropriate disciplines, objectivity, reliability and sound judgment;</p> <p>b) be independent of, and not be affiliated with or take instructions from, either Party; and,</p> <p>c) comply with a code of conduct to be established by the Parties.</p> <p>2. If either Party believes that a panelist is in violation of the code of conduct, the Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with the procedures set out in paragraph 4 that were used to select the panelist who was removed. The time limits shall run from the date of their agreement to remove the panelist. The Model Rules of Procedure may provide procedures for resolving the situation if the Parties do not agree.</p> <p>3. Individuals may not serve as panelists with respect to a review in which they have, or a person or organization with which they are affiliated has, an interest.</p> <p>Panel Selection Procedures</p> <p>4. For purposes of selecting a review panel, the following procedures shall apply:</p> <p>(a) within 20 days of the receipt of the request for the establishment of a panel, each Party shall select one panelist;</p> <p>(b) if one Party fails to select its panelist within such period, the other Party shall select the panelist from among qualified individuals who are nationals of the Party that has failed to select its panelist;</p> <p>(c) the following procedures shall apply to the selection of the chairperson:</p>	
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(i) the Party that is the object of the review shall provide the Party that made the request with the names of three individuals who it considers to be qualified to be the chairperson. The names shall be provided no later than 20 days after the receipt of the request for the establishment of the panel;

(ii) the Party that made the request may choose one of the individuals to be the chairperson or, if the names were not provided or none of the individuals is acceptable, provide the Party that is the object of the review with the names of three individuals who it considers to be qualified to be the chairperson. Those names shall be provided no later than five days after receiving the names under subparagraph (i) or 25 days after the receipt of the request for the establishment of the panel;

(iii) the Party that is the object of the review may choose one of the three individuals to be the chairperson, no later than five days after receiving the names under subparagraph (ii), in default of which the Parties shall immediately request the Director General of the International Labour Office to appoint a chairperson within 25 days.

#### Conduct of the Panel

5. The Parties shall, no later than one year after the entry into force of the Agreement, establish Model Rules of Procedure, which shall be used for the establishment and conduct of proceedings under Part Three. The Model Rules will include a code of conduct for the purposes of paragraph 1 and rules for the protection of information under Article 17.

6. The Parties shall agree on a separate

budget for each set of panel proceedings pursuant to Articles 13 to 14. The Parties shall contribute equally to the budget, unless they agree otherwise.

7. Unless the Parties otherwise agree, within 30 days after the Parties establish the panel, the terms of reference shall be:

"To examine, in light of the relevant provisions of this Chapter, whether the Party that was the object of the request has, in a trade-related matter, failed to comply with its obligations under Articles 1 and 2 to the extent that they refer to the ILO 1998 Declaration, or engaged in a persistent pattern of failure to effectively enforce its labour law through appropriate government action, private rights of action, procedural guarantees, public information and awareness, and to make findings, determinations and recommendations in accordance with paragraph 1 of Article 14."

8. For a determination under paragraph 3 of Article 13 of whether the matter is trade-related, the Party which has requested the panel has the onus of establishing that the matter is trade-related. For a determination under subparagraph 1(c) of Article 14 of whether the Party that is the object of the request has failed to comply with its obligations, the onus of establishing such non-compliance is on the Party which has requested the panel supplemented by any other information provided under subparagraph 3(c) of Article 13.

9. Canada shall, no later than the date on which a panel is convened pursuant to Article 13 respecting a matter within the scope of paragraph 3 of this Annex, notify the EU in writing of whether any recommendation of a panel in a report under Article 14 or any monetary assessment imposed by a panel under Annex 3 with respect to Canada shall be addressed to Her Majesty in right of Canada or Her Majesty in right of the province concerned.

10. A Panel may not release the final report

other than to the Parties. Panelists may furnish separate opinions on matters that are not the subject of unanimous agreement. A Panel however may not disclose which panelists are associated with majority or minority opinions.

### ANNEX 3

#### MONETARY ASSESSMENTS

The panel shall reconvene as soon as possible after delivery of the request pursuant to paragraph 6 of Article 14. Within 90 days after being reconvened, the panel shall determine whether the terms of the action plan have been implemented or the non-compliance otherwise remedied.

In the event of a negative determination under paragraph 1 above, the panel shall assess a monetary assessment which reflects a determination of the estimated costs of implementing the action plan, or in the absence of an action plan, other appropriate measures to remedy the non-compliance provided that:

(a) the panel may adjust the assessment to reflect:

i. any mitigating factors, such as good faith efforts made by the Party to begin remedying such non-compliance after the final report of the panel, bona fide reasons for the Party's failure to comply with such obligations or a real likelihood that the cost of the assessment would have a negative impact on vulnerable members of society;

ii. any aggravating factors, such as the pervasiveness and duration of the Party's failure to comply with its obligations; or

iii. the Party's national conditions, circumstances and needs; and

(b) in no circumstances shall the assessment exceed \$15 million U.S. dollars annually, or its equivalent in the currency of the Party complained against, adjusted to the rate of inflation of that Party.

3. Unless the Council otherwise decides, monetary assessments shall be paid to the complaining Party. Where the circumstances warrant, the Council may decide that an assessment shall be paid into an interest-bearing fund designated by the Council and shall be expended at the direction of the Council to implement the action plan or other appropriate measures.

4. Ninety days from the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any time thereafter, the requesting Party may provide notice in writing to the other Party demanding payment of the monetary assessment. The monetary assessment shall be paid in equal, quarterly instalments beginning 120 days after the requesting Party provides such notice and ending upon agreement of the Parties or upon the date of any panel determination under paragraph 5.

5. If the Party that was the object of the review considers that it has eliminated the non-compliance, it may refer the matter to the panel by providing written notice to the other Party. The panel shall be reconvened within 60 days of such notice and issue its report within 90 days thereafter.

6. In Canada, the procedures for enforcement of the monetary assessment shall be the following:

(a) The EU may file in a court of competent jurisdiction a certified copy of a panel



determination under paragraph 2 above only if Canada has failed to comply with the terms of a notice provided under paragraph 4 within 180 days of it being made;

(b) when filed, the panel determination, for purposes of enforcement, shall become an order of the court;

(c) the EU may take proceedings for enforcement of a panel determination that is made an order of the court, in that court, against the person in Canada against whom the panel determination is addressed in accordance with paragraph 9 of Annex 2;

(d) proceedings to enforce a panel determination that has been made an order of the court shall be conducted in Canada by way of summary proceedings, provided that the court shall promptly refer any question of fact or any question of interpretation of the panel determination to the panel that made the determination, and the decision of the panel shall be binding on the court;

(e) a panel determination that has been made an order of the court shall not be subject to domestic review or appeal; and

(f) an order made by the court in proceedings to enforce a panel determination that has been made an order of the court shall not be subject to review or appeal.

7. In the EU, the procedures for enforcement of the monetary assessment shall be the following. If the EU has failed to comply with a notice provided under paragraph 4 above within 180 days of it being made, the panel determination in the EU shall be executed:

(a) subject to subparagraph (b), Canada may file in a court of competent jurisdiction a certified copy of a panel determination;

(b) Canada may file in court a panel determination that is a panel determination described in paragraph 1(a) only if the Party complained against has failed to comply with the determination within 180 days of when the determination was made;

(c) the court of competent jurisdiction is the (EU to confirm);

(d) Canada shall certify that the panel determination is final and not subject to appeal;

(e) the (court of competent jurisdiction -- EU to confirm) shall issue a resolution ordering the enforcement of the panel determination within 10 days of when the petition was filed;

(f) the resolution of the (court of competent jurisdiction -- EU to confirm) shall be addressed to the competent administrative authority for its prompt compliance.

8. Any change by the Parties to the procedures adopted and maintained by each of them pursuant to this Article that has the effect of undermining the provisions of this Article shall be considered a breach of compliance.

**ARTICLE 18: Cooperation with International and Regional Organizations**

The Parties may establish cooperative arrangements with the International Labour Organization and other competent international and regional organisations to draw on their expertise and resources to achieve the objectives of this Chapter.

**ARTICLE 19: Definitions<sup>74</sup>**

For purposes of this Chapter:

"labour law" means laws, regulations and jurisprudence that implement and protect the labour principles and rights set out in Article 1;

"persistent pattern" means a sustained or recurring course of action or inaction beginning after the date of entry into force of the Agreement and does not include a single instance or case;

"trade-related" means related to trade or investment matters covered by the Canada-EU CETA, provided that this term shall not be interpreted as including the public sector.

**Article 11: Definitions**

For purposes of this Chapter:

"labour laws" means laws, regulations, administrative practices and all other measures directly applicable in the Parties' respective territories, including norms adopted through collective bargaining, the purpose of which relates to the following issues:

- a. The Fundamental Rights at Work, as contained and developed in the ILO Fundamental Conventions;
- b. Right to Strike;
- c. Tripartite consultation;
- d. Labour inspection;
- e. Employment security, including termination of employment;
- f. Conditions of work, including wages, working time, leave, and maternity protection;
- g. Occupational health and safety.

"labour standards" are binding or non-binding norms adopted, endorsed or

**LIMITE**

	<p>confirmed by a recognised body, for common and repeated use and respect in labour relations.</p> <p><b>See Article 6, EU proposal on Trade &amp; Sustainable Development</b></p>
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## TRADE AND ENVIRONMENT

The table below is structured on the basis of the following list of topics:

1. Context and objectives
2. Definitions
3. Levels of Protection
4. Multilateral Environmental Agreements
5. Enforcement and non-derogation
6. Environmental Assessment
7. Procedures and remedies available to private parties
8. Policies and measures to support trade and environmental objectives
9. Trade in forestry and in fisheries products
10. Cooperation
11. Joint bodies and Government communications
12. Public information and engagement
13. Review
14. Final provisions
15. Dispute resolution

This structure is aimed at facilitating discussion, and it is without prejudice to decisions on possible sections and sub-sections, title and order of articles, placement of provisions in the environment chapter or elsewhere in the agreement, or other structure and format issues.

CANADA	EUROPEAN UNION
[New CAN Proposal 2010-10]	
[CAN: Article X.1 Context and Objectives]	
<p>1. The Parties recognize that the environment is a fundamental pillar of sustainable development and enhanced cooperation between the Parties to protect and conserve the environment brings benefits which will promote sustainable development, strengthen the environmental governance of the Parties, build on international environmental agreements to which they are party and complement the objectives of the CETA.</p> <p><i>NOTE: Canada continues to consult internally on options for text to address concerns it expressed at Round 4 regarding the relationship of the Environment Chapter and the rest of the Agreement.]</i></p>	
Article X.2: Definitions	
[Consolidated Text of Environmental Laws Definition]	
For the purposes of this Chapter:	
<p>“environmental laws” [EU: means laws, regulations, and other legally binding measures directly applicable on the Parties' respective territories,] [CAN: mean statutory or regulatory provisions of a Party, including legally binding instruments made pursuant to such provisions,] the [CAN: primary] purpose of which is the protection of the environment, [CAN: or] the prevention of a danger to human [EU: , animal and plant] life or health, [EU: or the conservation and sustainable use of biological diversity and natural resources,] through:</p> <p>Negotiators' note: There is agreement that the definition should cover environmental provisions that are found in e.g. laws that also include other provisions not related to the environment.</p>	

[EU negotiator's note: it would be possible to remove the references to biological diversity and natural resources, as well as to animal and plant life or health, from the "chapeau" if those notions are integrated in the sub-paragraphs as follows:

e) the conservation of biological diversity in natural or agricultural ecosystems, including endangered species, their habitat, specially protected natural areas and genetic diversity;

f) the sustainable use of biological diversity and the elimination or reduction of negative environmental impacts resulting from the use of living and non-living natural resources or of ecosystems;]

a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;

[EU: b) the prevention, reduction or control of noise pollution;]

c) the [EU: evaluation, authorization],[CAN: assessment,] management, control or elimination, as appropriate, of chemical substances, [EU: including biocides and pesticides], as well as other substances and materials to the extent that they are environmentally hazardous or toxic;

[EU: d) waste management;]

[EU: e)] [CAN: c)] the [CAN: conservation and] protection of [EU: forests,] wild flora or wildlife [EU: in natural or agricultural ecosystems], including endangered species and their habitat, and specially protected natural areas [CAN: in the Party's territory];<sup>75</sup>

f) the conduct of environmental impact assessments;

[EU: g) access to environmental information and public participation in decision-making.]

[CAN: but does not include any statutory or regulatory provision directly related to worker health and safety, nor any statutory or regulatory provision of which the primary purpose is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources;]

<sup>75</sup> Negotiators' Note: Canada agrees to maintain the concept of hazardous waste, placement to be determined.

<p><b>“persistent pattern”</b> means a sustained or recurring course of action or inaction beginning after the date of entry into force of the Canada-European Union Comprehensive Economic and Trade Agreement [CETA];</p> <p>2. It is understood that a Party has not failed to <b>“effectively enforce its environmental laws”</b> in a particular case where the action or inaction in question by agencies or officials of that Party:</p> <ul style="list-style-type: none"> <li>a) reflects a reasonable exercise of discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or</li> <li>b) is the result of <i>bona fide</i> decisions to allocate resources to enforcement in respect of other environmental matters which have been determined to have a higher priority.</li> </ul>	
<p><b>Article 2: Right to regulate and levels of protection</b></p> <p>Recognizing the right of each Party to set its own environmental priorities, to establish its own domestic levels of environmental protection, and to adopt or modify its relevant laws and policies accordingly [EU: in a manner consistent with the international environmental agreements to which they are a party and with this Agreement], each Party shall [EU: seek to] ensure that [EU: its] [CAN: those] laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve those laws and policies and their underlying levels of protection [CAN: , in a manner consistent with the obligations under this Agreement].</p>	



	<p><b>Article 8: Scientific and technical information</b></p> <p>Each Party shall, when preparing and implementing measures aimed at environmental protection which may affect trade between the Parties or foreign direct investment, take account of relevant scientific and technical information and related international standards, guidelines or recommendations if they exist, and of the precautionary principle. Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing protective measures.</p>
<p><b>Article 2: Multilateral Environmental Agreements</b></p> <ol style="list-style-type: none"> <li>1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment policies, rules and measures. In this context, the Parties commit to consulting and co-operating as appropriate with respect to negotiations on [EU: trade-related environmental issues and other trade-related] environmental matters of mutual interest.</li> <li>2. [EU: The Parties shall effectively implement their respective laws and practices, in their whole territories,] [CAN: Each Party affirms the rights and obligations in] the Multilateral Environmental Agreements to which [EU: they are parties<sup>76</sup>] [CAN: it is a party].</li> <li>3. The Parties shall regularly exchange information [CAN: as appropriate] [EU: on their respective situation and advancements as regards additional ratifications of] [CAN: with regards to the implementation of] Multilateral Environmental Agreements or amendments to such Agreements [CAN: to which they are both parties].</li> </ol>	

<sup>76</sup> [EU: For the purposes of article 1.2, the multilateral environmental agreements referred to shall encompass those protocols, amendments, annexes and adjustments binding on the Parties.]

<p>[EU: Nothing in this Agreement shall prevent Parties from adopting or maintaining measures to implement the Multilateral Environmental Agreements to which they are party provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.]</p>	
<p>[EU: Article 3: EU: Upholding levels of protection] [CAN: Article X.4: Compliance with and Enforcement of Environmental Laws; Article X.5: Non-derogation]<sup>77</sup></p> <ol style="list-style-type: none"> <li>1. [CAN: A Party shall not] [EU: The Parties recognise that it is inappropriate to] encourage trade or investment by weakening or reducing the levels of protection afforded in [CAN: its] [EU: domestic] environmental laws.</li> <li>2. A Party shall not fail to effectively enforce its environmental laws [EU: through a sustained or recurring course of action or inaction, as an encouragement for trade or investment].</li> <li>3. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws, [EU: as an encouragement for trade or the establishment, acquisition, expansion or retention of an investment or an investor in its territory.] [CAN: in a manner that weakens or reduces the protections afforded in those laws to encourage trade or investment.]</li> <li>4. [CAN: Each Party shall ensure that violations of its environmental laws can be remedied or sanctioned under its law through judicial, quasi-judicial or administrative proceedings.]</li> </ol>	
<p><b>Article X.8: Private Access to Remedies</b></p> <ol style="list-style-type: none"> <li>1. Each Party shall ensure that interested persons residing in or established in the territory of such Party may request the Party's competent authorities to investigate alleged violations of its environmental laws and shall give such requests due consideration, in accordance with its law.</li> </ol>	<p>[New EU Proposal 2010-10]</p> <p><b>Article 4: Enforcement administrative proceedings and review of administrative action</b></p> <ol style="list-style-type: none"> <li>1. In connection with the obligations in article 3, each Party shall ensure that administrative or judicial procedures are</li> </ol>

2. Each Party shall ensure that persons with a legally recognized interest under its environmental laws in a particular matter shall have appropriate access to administrative, quasi-judicial or judicial proceedings for:

- a) the enforcement of the Party's environmental laws; and
- b) the seeking of remedies for violations of those laws.

**Article X.9: Procedural Guarantees**

1. Each Party shall ensure that its administrative, quasi-judicial and judicial proceedings referred to in 8(2) are fair, equitable and transparent and to this end shall provide that such proceedings:

- a) comply with due process of law;
- b) are open to the public, except where the administration of justice otherwise requires;
- c) entitle the parties to the proceedings to support or defend their respective positions and to present information or evidence; and
- d) are not unnecessarily complicated and do not entail unreasonable fees, unreasonable time limits or unwarranted delays.

available to persons [footnote] with a legally recognized interest in a particular matter or maintaining impairment of a right, subject to the conditions specified under its domestic legislation, in order to permit effective action against infringements of its environmental laws, including appropriate remedies for violations of such laws.

[footnote] Including non-governmental organisations promoting environmental protection and meeting any requirements under domestic law.

2. Each Party shall, in accordance with its legislation, ensure that the procedures referred to in paragraph 1 are not unnecessarily complicated or prohibitively costly, do not entail unreasonable time limits or unwarranted delays, provide injunctive relief, where appropriate, and are fair and equitable, including by:

- i. providing defendants with reasonable notice when a procedure is initiated, including a description of the nature of the proceeding and the basis of the claims;
- ii. affording the parties to the procedures a reasonable opportunity to support or defend their respective positions, including by presenting information or evidence, prior to any final decision;
- iii. providing that final decisions are made in writing and include a statement of reasons; and
- iv. allowing the parties to an administrative proceeding an opportunity for review of

<p>2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:</p> <ul style="list-style-type: none"> <li>a) in writing and where appropriate state the reasons on which the decisions are based;</li> <li>b) made available to the parties to the proceedings without undue delay; and to the public in accordance with its law; and</li> <li>c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.</li> </ul> <p>3. Each Party shall further provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction or redetermination of final decisions in such proceedings.</p> <p>4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent, and do not have any substantial interest in the outcome of the matter.</p>	<p>final administrative decisions within a reasonable time by a tribunal established by law, with appropriate guarantees of independence and impartiality of decision-makers.</p>
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**[EU: Article X.5: Trade favouring environment protection**

1. The Parties are resolved to make continuing special efforts to facilitate and promote trade and investment in environmental goods and services, [EU: as well as eco-labelled goods], including through [EU: addressing] [CAN: undertaking to reduce] related non-tariff barriers.
2. The Parties shall pay special attention to facilitating the removal of obstacles to trade or investment concerning goods and

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services of particular relevance for climate change mitigation [CAN: and adaptation.] [EU:, in particular renewable energy goods and related services, including through the adoption of policy frameworks conducive to the deployment of best available technologies and through the promotion of standards that respond to environmental and economic needs and minimise technical obstacles to trade.]

**Article X.11: Measures to Enhance Environmental Performance**

1. The Parties recognize that voluntary and incentive-based measures can enhance environmental performance and contribute to the achievement and maintenance of environmental protection, complementing regulatory provisions under environmental laws. In accordance with its laws and policies, each Party shall promote the development and use of such measures.

2. In accordance with its laws and policies, each Party shall promote the development, establishment, maintenance or improvement of performance goals and standards used in measuring environmental performance.

**See Article 3, EU proposal on Trade & Sustainable Development**

**Article 6: Trade in forestry products**

The Parties recognise the importance of ensuring the conservation and sustainable management of forests and forests' contribution to the Parties' economic, environmental and social objectives. To this end, the Parties undertake to:

- (a) Promote trade in forest products derived from sustainably managed forests, harvested in accordance with the domestic legislation of the country of harvest.

(b) Exchange information on measures to promote consumption of timber and timber products from sustainably managed forests and, where relevant, cooperate to develop such measures.

(c) Adopt actions to combat illegal logging and related trade, including with respect to third countries, as appropriate.

(d) Exchange information on actions to combat illegal logging and related trade and where relevant cooperate to maximise the impact and ensure the mutual supportiveness of their respective policies aiming at excluding illegally harvested timber and timber products from trade flows.

(e) Promote the effective use of CITES with regard to timber species that are considered at risk

(f) Cooperate at the regional and global levels with the aim of promoting sustainable management of all types of forests.]

#### **Article 7: Trade in fisheries products**

The Parties recognise the importance of ensuring the conservation and management of fish stocks in a sustainable and responsible manner in order to guarantee their sustainability. To this end, the Parties undertake to:

(a) Conserve fish stocks by adopting effective monitoring and control measures to ensure full compliance with applicable conservation measures, such as observer schemes, vessel monitoring schemes, transshipment

	<p>control, inspections at sea and port state control.</p> <p>(b) Adopt actions and cooperate to combat illegal, unreported and unregulated (IUU) fishing. In this context, the Parties shall facilitate the exchange of information on any IUU activities in their waters and implement policies and measures to exclude IUU products from trade flows.</p> <p>(c) Cooperate with and within Regional Fisheries Management Organisations as widely as possible with the aim of achieving good governance.</p> <p>(d) Improve the efficiency of their markets, in particular by providing information to consumers and promoting traceability.</p>
<p><b>[[EU: Article 9:] [CAN: Annex 1:] Cooperation on environment issues]</b></p> <p>1. The parties recognise that enhanced cooperation is an important element to advance the objectives of this Chapter, and they commit to cooperate, through actions and instruments that may include technical exchanges, exchanges of information and best practices, research projects, studies, reports, conferences and workshops, on trade-related environmental issues of common interest, in areas such as:</p> <p>(a) the potential impacts of this Agreement on the environment and ways to enhance, prevent or mitigate them, taking into account impact assessments carried out by the Parties;</p> <p>(b) activities in international fora dealing with issues relevant for both trade and environmental policies, including in particular the</p>	

WTO, the OECD, the United Nations Environment Programme and multilateral environmental agreements [CAN: , including the relationship between multilateral environmental agreements and international trade rules];

- (c) the environmental dimension of corporate social responsibility and accountability, including on the implementation and follow-up of internationally agreed guidelines, [EU: fair and ethical trade, private and public certification and labelling schemes including eco-labelling and green public procurement];
- (d) the trade impact of environmental regulations and standards as well as the environmental impacts of trade and investment rules including on the development of environmental regulations and policy;
- (e) [CAN: the economic and] trade-related aspects of the current and future international climate change regime [CAN: and/or domestic climate policies and programs covering both mitigation and adaptation,] including issues relating to [EU: global] carbon markets, ways to address adverse effects of trade on climate, as well as means to promote [EU: low-carbon technologies and] [CAN: development and deployment of climate-friendly technologies and] energy efficiency [CAN: including the coordination of such development];
- (f) [CAN: research and innovation in all dimensions of environmental science and technology – e.g. environment, climate, energy and health – involving all relevant participants];

Note: Placement in CETA pending progress on the Cooperation Chapter.

- (g) [EU: cooperation on measures to promote sustainable fishing practices and trade in sustainably managed fish products];
- (h) [EU: cooperation on trade-related measures to tackle deforestation including by addressing problems regarding illegal logging];
- (i) trade and investment in environmental goods and services, including environmental and green technologies and practices, renewable energy, energy efficiency and water use, conservation and treatment;
- (j) [EU: cooperation on trade-related aspects of the conservation and sustainable use of biological diversity];

Note: Subject to further consultations.



(k) the promotion of life-cycle management of goods, including carbon accounting and end of life management – extended producer responsibility, recycling and reduction of waste, and other best practices; or

(l) [CAN: education relative to the link between the economy and the environment.]

(m) [EU: exchange of views on the relationship between multilateral environmental agreements and international trade rules; ]

2. The parties will consider views or input from the public and interested stakeholders for the definition and implementation of their cooperation activities, and they may involve them further in such activities, as appropriate.

#### **Article ? Institutional mechanisms<sup>78</sup>**

1. Each Party shall designate one office which shall serve as a Point of Contact with the other Party for the purposes of implementing this Chapter, including with regard to:

- a) Cooperative programs and activities in accordance with Article ...
- b) [to be completed after discussion of other relevant provisions: reference to submissions from stakeholders and the public]
- c) information to be provided to the other Party, the review panels and the public.

2. The Parties hereby establish a [Name to be determined] to:

- Oversee the implementation of this Chapter and review progress under it;
- Discuss matters of common interest; and
- Address any other matter within the scope of this Chapter as the Parties jointly decide.

3. The [Name to be determined] shall be comprised of [high level representatives] [senior officials]<sup>79</sup> of the Parties responsible for matters covered by this Chapter.

4. Unless the Parties otherwise jointly decide, the [Name to be determined] shall convene within one year, and thereafter as often as

<sup>78</sup> Negotiator's note: Without prejudice to horizontal discussions on the institutional mechanisms and structures under CETA.

<sup>79</sup> Negotiators' note: choice of terms to be decided, consistent with approach to be taken in labour chapter and CETA

the Parties consider necessary, and each meeting shall include a session with the public to discuss matters relating to the implementation of this Chapter].

## Article X

The NAME shall promote transparency and public participation. To this end:

- i. all decisions and reports that the NAME may adopt shall be made public, unless the NAME decides otherwise;
- ii. the NAME shall present updates on matters related to this Chapter, including its implementation, to the Civil Society Forum referred to in [Article]. Any views or opinions of the Civil Society Forum may be submitted directly to the Parties, or [EU: through the domestic advisory group(s)]. The NAME shall report annually on the follow-up given to such communications;
- iii. each Party shall be open to receive and shall give due consideration to submissions from the public on matters related to this Chapter, including communications on implementation concerns; [EU: each Party shall inform its domestic advisory group(s) of such communications;] the NAME shall report annually on matters it may address pursuant to such communications for those matters brought to its attention.

### Article X.7: Public Information

1. Each Party, as well as complying with Art X.01 of Transparency Chapter, shall encourage public debate with and among non-State actors as regards the development and definition of policies that may lead to the adoption by public authorities of environmental laws and regulations.
2. Each Party shall promote public awareness of its environmental laws and regulations, as well as enforcement and compliance procedures, by ensuring the availability of information to stakeholders.

	<p>See Article 2, EU proposal on Trade &amp; Sustainable Development</p> <p>See Article 5, EU proposal on Trade &amp; Sustainable Development</p> <p>Article 10: Institutional mechanisms<sup>80</sup></p> <p>5. Each Party shall consult a domestic environment or sustainable development advisory group(s), or establish new ones when they do not exist, to provide views and advice on issues relating to this Chapter. Such groups may submit opinions and make recommendations on any matter related to this Chapter on their own initiative. The domestic advisory group(s) comprise(s) independent representative organisations of civil society in a balanced representation of environmental groups, business organisations, as well as other relevant stakeholders as appropriate.</p> <p>6.</p>
<p><b>Article X.: Government Consultations</b></p> <ol style="list-style-type: none"> <li>1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The request shall present the matter clearly, identifying the questions at issue and providing a brief summary of any claims under this Chapter. Consultations shall commence promptly after a Party delivers a request for consultations.</li> <li>2. During consultations, each Party shall provide the other with sufficient information in its possession to allow a full</li> </ol>	

examination of the matters raised, [subject to any domestic legislation regarding confidential personal and commercial information]<sup>81</sup>.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

[Cda:

4. If the Parties fail to resolve the matter through the Committee, a Party may request in writing consultations with the other Party at the Ministerial Council level. The Party receiving the request shall respond expeditiously. Ministerial consultations shall be concluded no later than 120 days after the request unless the Parties decide otherwise. ]

[EU:

4. The Parties shall take into account the activities of relevant multilateral environmental organisations or bodies so as to promote greater cooperation and coherence between the work of the Parties and these organisations. In matters related to the respect of multilateral agreements as set out in Article 2, the Parties shall seek advice from the relevant MEAs bodies, and they shall rely on any pertinent available interpretative guidance, findings or decisions adopted under those MEAs.
5. If a Party considers that the matter needs further discussion, that Party may request that [the Board on Trade and Sustainable Development] be convened to consider the matter by delivering a written request to the contact point of the other Party. [The Board] shall convene promptly and endeavour to agree on a resolution of the matter. Where appropriate, it shall seek the advice of the Parties' domestic advisory group(s).
6. Any solutions or decisions on matters discussed under this Article shall be made publicly available.]

<b>Article X:    Dispute Resolution</b>	

5. Following the consultations at the Ministerial Council level, the requesting Party may request that a Review Panel be convened, if it considers the consultations have not satisfactorily addressed the manner and if it considers that:

(a) there has been a persistent pattern of failure by the other Party to effectively enforce its environmental laws; or

(b) there has been a breach of the obligations set out in Article 5.

6. The Review Panel shall be established with specific terms of reference provided by the Parties, and function in accordance with Annex II and the Model Rules of Procedure.

7. If the Review Panel determines that there has been a persistent pattern of failure by a Party to effectively enforce its environmental laws or that there has been a breach of the obligation set out in Article 5, the Parties may develop a mutually satisfactory action plan to implement the Panel's recommendations. The action plan shall be developed within the 90 days following the Panel's submission of its final report, or such longer period as the Parties may decide. Upon its development, the action plan shall be made public without delay.

8. Chapter 14 (Dispute Settlement) does not apply to any dispute concerning the interpretation or application of this Chapter.

## Article 12: Panel of Experts<sup>82</sup>

1. The provisions in Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement], as well as the Rules of Procedure in Annex X and the Code of Conduct in Annex Y, shall apply, except as otherwise provided in this Article.

2. A Party may, 90 days after the delivery of a request for consultations under Article 9.1, request that a Panel of Experts be convened to examine a matter that has not been satisfactorily addressed through government consultations.

3. The [Joint Body] shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 persons who are willing and able to serve as experts in Panel procedures. Each Party shall propose five individuals to serve as experts. The Parties shall also select five individuals who are not nationals of either Party and who shall act as chairperson to the Panel of experts. The [Joint Body] will ensure that the list is always maintained at this level.

4. The list referred to in paragraph 3 shall comprise individuals with specialised knowledge or expertise in law, environmental issues addressed in this Chapter, or the resolution of disputes arising under international agreements. They shall be independent, serve in their

**Annex II**

**Dispute Resolution**

**Review Panel Process**

**Initial Report:**

1. The Review Panel shall prepare an initial report within 120 days of the date the last panelist is selected or as otherwise decided and submit such report to the Parties.
2. Such report shall contain:
  - (a) findings of fact;
  - (b) the Review Panel's determination as to whether there has been a persistent pattern of failure by a Party to effectively enforce its environmental laws, or whether there has been a breach of the obligation under Article 5; and,
  - (c) in the event of a positive determination under sub paragraph (b) its recommendations to resolve the matter.

**Final Report:**

3. The Parties may provide comments on the initial report within 60 days of its presentation.

individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party, and shall comply with [the Code of Good Conduct].

5. For matters arising under this Chapter, the Panel of Experts shall be composed of experts from the list referred to in paragraph 3, in accordance with the relevant provisions of Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement].
6. In matters related to the respect of multilateral agreements as set out in Article 2, the Panel should seek advice from MEA bodies, and it shall rely on any pertinent available interpretative guidance, findings or decisions adopted in those bodies.
7. The Panel of Experts shall issue to the Parties a report setting out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes. The Parties shall make the report publicly available within 15 days of its issuance.
8. The Panel's report and recommendations shall not be binding on the Parties. The Parties shall endeavour to discuss appropriate measures to be implemented taking into account the Panel's report and recommendations. The Party concerned shall inform its advisory groups and the

<p>4. The Review Panel shall submit the final report to the Parties within 30 days of receiving comments from the Parties.</p> <p>5. Each Party shall publish the final report within 60 days after it is submitted to the Parties.</p> <p><b>Criteria for Selecting Panel Review:</b></p> <p>6. A Review Panel shall be composed of three panelists appointed by the Parties.</p> <p>7. Panelists shall:</p> <ul style="list-style-type: none"> <li>a) be chosen based on their expertise in environmental matters or other appropriate disciplines, as well as on their objectivity, reliability and sound judgment;</li> <li>b) be independent of, and not be affiliated with or take instructions from, either Party; and</li> <li>c) comply with a code of conduct to be established by the Parties.</li> </ul> <p>8. If either Party believes that a panelist has violated the code of conduct, the Parties shall consult and, if they so decide, the panelist shall be removed and a new panelist shall be selected in accordance with the criteria set out above. The time limits listed in paragraph 1 shall run from the date of the decision to remove the panelist.</p>	<p>other Party of its decisions on any actions or measures to be implemented no later than three months after the public release of the report. The follow-up to the report and the recommendations of the Panel of Experts shall be monitored by the Board on Trade and Sustainable Development. The advisory bodies and the Civil Society Forum may submit observations to the Board on Trade and Sustainable Development in this regard.</p> <p>9. For greater certainty, a Party's decision not to follow or to depart from the Panel's report and recommendations shall not trigger the imposition of any economic penalties by the other Party.</p>
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9. Individuals may not serve as panelists for a review in which they have, or a person or organization with which they are affiliated has an interest.

10. The chair shall not be a national of either Party.

**Panel Selection Procedures:**

11. For purposes of selecting a Review Panel, the following procedures shall apply:

- a) within 20 days of receiving of the request to establish a Review Panel, each Party shall select one panelist;
- b) if one Party fails to select a panelist within such period, the other Party shall select the panelist from among qualified individuals who are nationals of the Party that failed to select its panelist; and
- c) the following procedures shall apply to the selection of the chair:
  - (i) the Party that is the subject of the request for the establishment of a panel (the "subject Party") shall provide the requesting Party with the names of three qualified candidates to be the chair. The names shall be provided within 20 days of receiving the



request to establish the Review Panel;

- (ii) the requesting Party may choose one of the individuals to be the chair or, if the names were not provided or none of the individuals are acceptable, provide the subject Party with the names of three qualified candidates to be the chair. Those names shall be provided no later than five days after receiving the names under sub-paragraph (i) or 25 days after the receipt of the request for the establishment of the panel;
- (iii) the subject Party may choose one of the three individuals to be the chair, within five days of receiving the names under sub-paragraph (ii), failing which the Parties shall immediately request the President of the International Court of Justice to appoint a chair within 25 days.

**Rules of Procedure:**

12. The Parties shall, no later than one year after the entry into force of this [Agreement], establish Model Rules of Procedure, which shall be used to establish and conduct proceedings under Article 23. Unless the Parties decide otherwise, the Review Panel shall perform its functions according to the Model Rules of

<p>Procedure and shall ensure that:</p> <p>(a) each Party has the opportunity to provide written and oral submissions to the Review Panel;</p> <p>(b) non-governmental organizations, institutions, and persons with relevant information or expertise in the Parties' territories have the opportunity to provide written submissions to the Review Panel; and</p> <p>(c) at least one hearing is held before the Review Panel for each set of review panel proceedings, which shall be open to the public, subject to Article 21.</p> <p>13. The Parties shall decide on a separate budget for each Review Panel established under Article 23. The Parties shall contribute equally to the budget, unless they decide otherwise.</p>	
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## TRADE AND SUSTAINABLE DEVELOPMENT

### Preamble of the CETA (submitted by Canada to the EU)

*Proposed text to be included in the preamble of the CETA to underscore the importance of sustainable development:*

[UNDERTAKE each of the preceding [trade-related language outlined previously in the preamble] in a manner that is consistent with environmental protection and conservation];

ENHANCE AND ENFORCE environmental laws and regulations, and strengthen cooperation on environmental matters;

PROTECT, ENHANCE AND ENFORCE basic workers' rights, strengthen cooperation on labour matters and build on their respective international commitments on labour matters;

PROMOTE sustainable development;

- (a) the production, distribution, sale or exhibition of audio or video music recordings;
- (a) the publication, distribution or sale of music in print or machine-readable form; or
- (a) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services.]  
[EC comment: linked to discussions on cultural exception]

**[tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

**tax and taxation measure** does not include:

- (a) a "customs duty, or
- (b) a measure listed in exceptions (b), (c), or (d) in the definition of "customs duty" in Article 1.01 (Initial Provisions and General Definitions – Definitions of General Application).] [EC comment: linked to discussions on taxation article]

**[Article X.02: General Exceptions**

1. [For the purposes of Chapters X through Y and Chapter Z (National Treatment and Market Access for Goods, Rules of Origin, Customs Procedures, Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Emergency Action and Electronic Commerce), GATT 1994 Article XX is incorporated into and made part of this Agreement. The Parties understand that the measures referred to in GATT 1994 Article XX (b) include environmental measures necessary to protect human, animal or plant life or health. The Parties further understand that GATT 1994 Article XX (g) applies to measures for the conservation of living and non-living exhaustible natural resources.][EC comment: for discussion in groups dealing with trade in goods and sustainable development]

[2. For the purposes of Chapters X, Y, and Z (Cross-Border Trade in Services, Telecommunications, Temporary Entry for Business Persons, and Electronic Commerce) GATS Article XIV (a), (b) and (c) is incorporated into this Agreement. The Parties understand that the measures referred to in GATS Article XIV (b) include environmental measures necessary to protect human, animal or plant life or health.

3. For the purposes of Chapter X (Investment):

- (a) a Party may adopt or enforce a measure necessary:
  - (i) to protect human, animal or plant life or health, which the Parties understand to include environmental measures necessary to protect human, animal or plant life or health,
  - (ii) to ensure compliance with domestic law that is not inconsistent with this Agreement, or
  - (iii) for the conservation of living or non-living exhaustible natural resources;
- (b) provided that the measure referred to in sub paragraph (a) is not:
  - (i) applied in a manner that constitutes arbitrary or unjustifiable discrimination between investments or between investors, or
  - (ii) a disguised restriction on international trade or investment.] [EC comment: for discussion in groups dealing with services, investment, and sustainable development]

#### Article X.03: National Security

This Agreement does not:

- (a) require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests;
- (b) prevent a Party from taking an action that it considers necessary to protect its essential security interests:
  - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;
  - (ii) taken in time of war or other emergency in international relations; or
  - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
- (c) to prevent a Party from taking any action in order to carry out its international obligations for the purpose of maintaining international peace and security.

#### Article X 04: Taxation (a consolidated draft text)

(*EU proposals: in italics, CAN proposals: in bold*)

1. Except as set out in this Article, this Agreement does not apply to a taxation measure.

2. *[EU: Nothing in this Agreement or in any arrangement adopted under this Agreement shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their respective tax law, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.]*
3. *[EU: Nothing in this Agreement or in any arrangement of the Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic tax law.]*
4. This Agreement does not affect the rights and obligations of a Party<sup>87</sup> under a tax convention. In the event of inconsistency between this Agreement and a tax convention, that convention prevails *[to the extent of the inconsistency]*. Where a provision with respect to a taxation measure under this Agreement is similar to a provision under a tax convention, the competent authorities identified in the tax convention shall use the procedural provisions of that tax convention to resolve an issue that may arise under this Agreement.

5. [CAN: Notwithstanding paragraph 4 :

Article X (National Treatment and Market Access for Goods – National Treatment) and the provisions of this Agreement necessary to give effect to that Article apply to a taxation measure to the same extent as Article III of the GATT 1994.]

6. [CAN: Subject to paragraphs 4 and 7:

(a) Article X (Cross-Border Trade in Services – National Treatment) and Article X (Financial Services – National Treatment) apply to a taxation measure on income, capital gains or on the taxable capital of corporations that relate to the purchase or consumption of a particular service, and

(b) Articles X and Y (Investment – National Treatment and Most-Favoured-Nation Treatment), Articles X and Y (Cross-Border Trade in Services – National Treatment and Most-Favoured-Nation Treatment) and Articles X and Y (Financial Services – National Treatment and Most-Favoured-Nation Treatment) apply to a taxation measure, other than one on income, capital gains or on the taxable capital of corporations.]

7. [CAN: Paragraph 6 does not:

(a) impose a most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(b) impose on a Party an obligation making the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans conditional on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan;

<sup>87</sup> to be reviewed once a definition of a Party for the EU is agreed

- (c) impose on a Party an obligation making the receipt, or continued receipt, of an advantage relating to the purchase or consumption of a particular service conditional on a requirement that the service be provided in its territory;
- (d) apply to a non-conforming provision of an existing taxation measure;
- (e) apply to the continuation or prompt renewal of a non-conforming provision of an existing taxation measure;
- (f) apply to an amendment to a non-conforming provision of an existing taxation measure provided that the amendment does not decrease its conformity, as it existed immediately before the amendment, with the Articles referred to in paragraph 5; or
- (g) apply to a new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, a measure that is taken by a Party in order to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) and that does not arbitrarily discriminate between persons, goods or services of the Parties.]

8. [CAN: Subject to paragraph 4, and without prejudice to the rights and obligations of the Parties under paragraph 5, Article X (Investment – Performance Requirements) applies to a taxation measure.]

9. [CAN: Notwithstanding paragraph 4, Article 9X (Investment – Expropriation) applies to a taxation measure, but an investor may not invoke that Article as the basis for a claim under Articles X (Investment – Claim by an Investor of a Party on Its Own Behalf) or X (Investment – Claim by an Investor of a Party on Behalf of an Enterprise), where the designated authorities of the Parties have determined under this paragraph that a taxation measure is not an expropriation. The investor shall refer the issue of whether a measure is not an expropriation for a determination to the designated authorities of the Parties at the time that it gives notice under subparagraph X(X) of Article X (Investment – Conditions Precedent to Submission of a Claim to Arbitration). If, within a period of six months from the date of this referral, the designated authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation, the investor may submit its claim to arbitration under Article X (Investment – Submission of a Claim to Arbitration).]

10. [CAN: In order to give effect to paragraphs 1 and 4:

- (a) If an issue arises as to whether a measure of a Party is a taxation measure in a dispute between the Parties, either Party may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind a panel established under Article X (Dispute Settlement – Establishment of a Panel) for the dispute. If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue.
- (b) If an issue arises as to whether a measure is a taxation measure in connection with a claim by an investor of a Party, the Party that has received notice of intention to submit a claim or against which an investor of a Party has submitted a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall decide whether the measure is a taxation measure, and their decision shall bind a Tribunal with jurisdiction over the claim. A Tribunal seized of a claim in which the same issue arises may not proceed while

the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the Tribunal shall decide the issue.

(c) If an issue arises as to whether a tax convention prevails over this Agreement in a dispute between the Parties, a Party to the dispute may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, procedures concerning that measure may not be initiated under Article X (Dispute Settlement – Establishment of a Panel). Procedures concerning the measure may not be initiated while the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue.

(d) If an issue arises as to whether a tax convention prevails over this Agreement prior to the submission of a claim by an investor of a Party, the Party that has received notice of intention to submit a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, a claim concerning that measure may not be submitted under Article X (Investment – Submission of a Claim to Arbitration). A claim concerning the measure may not be submitted while the designated authorities are considering the issue. An investor of a Party that fails to identify a taxation measure in its notice of intention to submit a claim may not submit a claim concerning that measure under Article X (Investment – Submission of a Claim to Arbitration). If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue.]

11. [CAN: If an investor invokes Article X (Investment – Expropriation) as the basis for a claim under Article X (Investment – Claim by an Investor of a Party on Its Own Behalf) or X (Investment – Claim by an Investor of a Party on Behalf of an Enterprise), the designated authorities shall make a determination under paragraph 9 of whether a measure is an expropriation concurrently with a decision under paragraph 10(b) of whether the measure is a taxation measure.]

12. [CAN: The designated authorities seized of an issue under paragraphs 8, 10 or 11 may modify the time period allowed to decide the issue.]

13. [CAN: This Agreement does not require a Party to furnish or allow access to information whose disclosure would be contrary to that Party's law protecting information concerning the taxation affairs of a taxpayer.]

#### Article X.05: Disclosure of Information

[1. This Agreement does not require a Party to furnish or allow access to information which if disclosed would impede law enforcement, or would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions.]



2. In the course of a dispute settlement procedure under this Agreement:
  - (a) a Party is not required to furnish or allow access to information protected under its competition laws;
  - (b) a competition authority of a Party is not required to furnish or allow access to information that is privileged or otherwise protected from disclosure.

**[Article X.06: Cultural Industries ]**

[This Agreement does not apply to a measure adopted or maintained by a Party with respect to a person engaged in a cultural industry except as specifically provided in Article X (National Treatment and Market Access for Goods – Tariff Elimination).] [EC comment: this exception seems very broad. We understand it as allowing for example IPR infringement, discrimination or complete import or sales ban of foreign cultural products. Is this the intention? In any event, the clause should explicitly state that it is without prejudice to the parties' rights and obligations under the WTO]

**Article X.07: World Trade Organization Waivers**

If a right or obligation in this Agreement duplicates one under the WTO Agreement, the Parties agree that a measure adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX of the WTO Agreement is deemed to be also in conformity with the present Agreement. [ Such conforming measure of either Party may not give rise to a claim by an investor of one Party against the other under Section B of Chapter Nine (Settlement of Disputes between an Investor and the Host Party).]

## FINAL PROVISIONS

### Article X.01: Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement constitute integral parts of this Agreement. *[EC: if used, add also "Protocols"]*

### Article X.02: Amendments

1. [The Agreement may be amended in writing by mutual consent of the Parties][EC: by means of a decision of the [institutional body]. The Parties may adopt the decision subject to their respective applicable legal requirements and procedures].
2. [An amendment enters into force following an exchange of written notifications by the Parties certifying the completion of their respective necessary legal procedures. The amendment enters into force on the date agreed upon by the Parties].*[ EC comment: entry into force could be regulated in the decision referred above].*

### Article X.03: Reservations

A Party may not make unilateral reservations or unilateral interpretive declarations to this Agreement. *[EC comment: we need to discuss this further, in our practice we often have statements or declarations attached to the Council decision on the signature (but not attached to the text of the Agreement itself)]*

### Article X.04: Entry into Force

Each Party shall notify the other Party in writing of the completion of its legal or constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the latter notification of the completion of the procedures for the entry into force. *[EC: provisional application, if applicable, could also be addressed in this article]*

### Article X.05: Termination

[EU: This Agreement shall be valid for an unlimited period]. This Agreement may be terminated by either Party by giving notice in writing. It shall cease to be in force 6 months after the date of receipt of that notice.

**Article X.06: Accession**

[A third State or group of States may accede to this Agreement through an accession agreement between the Parties and the acceding State or group of States.]

EC: Any new Member State of the EU shall accede to this Agreement from the date of its accession to the EU by means of a clause to that effect in the act of accession. If the act of accession to the EU does not provide for such automatic accession of the EU Member State to this Agreement, the EU Member State concerned shall accede by depositing an act of accession with the [depository]. Any necessary adaptation to this Agreement shall be adopted by the [institutional body] by means of a decision.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

**DONE** in duplicate at \_\_\_\_\_, this \_\_\_\_\_ day of 20XX in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish languages, each version being equally authentic.

\_\_\_\_\_  
For Canada

\_\_\_\_\_  
For the EU

## INITIAL PROVISIONS AND GENERAL DEFINITIONS

### Section A – General Definitions<sup>88</sup>

#### [Article X.01: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

**Commission** means the Trade Commission established under Article X.01 (Administration of the Agreement);

**Coordinators** means the Agreement Coordinators established under Article X.02 (Administration of the Agreement);

**customs duty** includes a customs or import duty and a charge of any kind imposed on or in connection with the importation of a good, including a form of surtax or surcharge in connection with that importation, but does not include a:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
- (b) anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law;
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered; and
- (d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

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<sup>88</sup> The Parties agree that in the course of the negotiations and legal review certain definitions may be moved to or from specific chapters. Finalization of the definitions is subject to the closing and review of outcomes at other tables.

**Customs Valuation Agreement** means the *WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*;

**days** means calendar days, including weekends and holidays;

**enterprise** means an entity constituted or organized under applicable law, whether or not for profit, and whether privately owned and controlled or governmentally owned and controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or other association;

**existing** means in effect on the date of entry into force of this Agreement;

**GATS** means the *WTO General Agreement on Trade in Services*;

**GATT 1994** means the *WTO General Agreement on Tariffs and Trade 1994*;

**goods of a Party** means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

**Harmonized System (HS)** means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, Chapter Notes and subheading notes;

**heading** means a four-digit number, or the first four digits of a number, used in the nomenclature of the Harmonized System;

**measure** includes a law, regulation, procedure, requirement or practice;

**national** means a natural person who is a citizen according to Article X.07, or is a permanent resident of a Party;

**originating** means qualifying under the rules of origin set out in Chapter X (Rules of Origin);

**person** means a natural person or an enterprise;

**person of a Party** means a national, or an enterprise of a Party;

**preferential tariff treatment** means the application of the respective duty rate under this Agreement to an originating good, pursuant to the tariff elimination schedule;

**sanitary or phytosanitary measure** means a measure referred to in Annex A, paragraph 1 of the *SPS Agreement*;

**SPS Agreement** means the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures*;

**state enterprise** means an enterprise that is owned, or controlled through ownership interests, by a Party;

**subheading** means a six-digit number, or the first six digits of a number, used in the nomenclature of the Harmonized System;

**tariff classification** means the classification of a good or material under a chapter, heading or subheading of the Harmonized System;

**tariff elimination schedule** means Annex X.1;

**TRIPS Agreement** means the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights*;

**WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization*, done on 15 April 1994. ] [joint comment: in principle all definitions affecting more than one chapter should be here, to be revised at later stage]

...

#### **Article X-02: Country-specific Definitions**

For purposes of this Agreement, unless otherwise specified:

**citizen** means, with respect to Canada, a natural person who is a citizen of Canada under Canadian legislation.

**[national government means:**

- (a) with respect to Canada, the Government of Canada; and
- (b) [with respect to the EC][not applicable to EC]

**sub-national government means:**

- (a) with respect to Canada, provincial, territorial, or local governments; and
- (b) [with respect to the EC][not applicable to EC]]

Joint comment: the issue of multi-layered governance to be re-discussed, including specific terminology to be used and whether general definition is needed here or could be addressed in specific chapters.

**[Geographical scope of application**

Unless otherwise specified, this Treaty shall apply:

- (a) [with respect to Canada, (i) the land territory, air space, internal waters and territorial sea of Canada; [(ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* done on 10 December 1982 (UNCLOS); and (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS];] [EU: subject to internal discussions]
- (b) [with respect to the EU, the territories in which the Treaty on the European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties.]]

Joint comment: work intersessionally.

**Section B – Initial Provisions**

**Article X.03: Establishment of the Free Trade Area**

The Parties to this Agreement, consistent with Article XXIV of the GATT 1994 and Article V of the GATS, hereby establish a free trade area.

**Article X.04: Relation to Other Agreements**

1. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement and other agreements to which the Parties are party.
2. [CDN: In the event of any inconsistency between this Agreement and the agreements referred to in paragraph 1, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.] [EC: prefers to rely on VCLT instead of having such a rule]
3. [Others to be determined.]

**Article X.05: Extent of Obligations**

[Language on Extent of Obligations will be provided by Canada at a later date.]

[EC: Each Party shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance at all levels of government.]

**[Article X.06: Relation to Environmental and Conservation Agreements]**

In the event of an inconsistency between an obligation in this Agreement and an obligation of a Party under an agreement listed in Annex X, the latter obligation shall prevail provided that the measure taken is necessary to comply with that obligation, and is not applied in a manner that would constitute, where the same conditions prevail, arbitrary or unjustifiable discrimination or a disguised restriction on international trade.] [EC: for discussion and possible placement in environmental group]



**Article X.07: Reference to Other Agreements**

Where this Agreement refers to or incorporates by reference other agreements or legal instruments in whole or in part, such references include related footnotes, interpretative and explanatory notes. Except where the reference affirms existing rights, such reference also includes, as the case may be, successor agreements to which the Parties are party or amendments binding on the Parties. [EC: OK – have informed other leads. At a later date, will need to check that they are drafting accordingly.]

[Annex X.05: Multilateral Environmental Agreements

- (a) The *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington on 3 March 1973, as amended on 22 June 1979.
- (b) The *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal on 16 September 1987, as amended 29 June 1990, as amended 25 November 1992, as amended 17 September 1997, as amended 3 December 1999.
- (c) The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, done at Basel on 22 March 1989.
- (d) The *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, done at Rotterdam on 10 September 1998.
- (e) The *Stockholm Convention on Persistent Organic Pollutants*, done at Stockholm on 22 May 2001.]

[EC: for discussion in group on sustainable development]

## TRANSPARENCY

### Section A- Publication, Notification and Administration of Laws

#### Article X.01: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or made available in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. To the extent possible, each Party shall:
  - (a) [EC: endeavour to] publish in advance any such measure that it proposes to adopt; and
  - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

#### Article X.02: Notification and Provision of Information

1. [To the extent possible, each Party shall notify the other Party of any existing or proposed measure that the Party considers might materially affect the operation of this Agreement or substantially affect the other Party's interests under this Agreement.] [EC comment: this may create a lot of notifications – to be considered in light of other notification rules in other chapters]
2. On request of the other Party, a Party shall [EC: endeavour to] promptly provide information and respond to questions pertaining to any existing or proposed measure, [regardless of] whether the other Party has been previously notified of that measure.
3. A notification or information provided under this Article is without prejudice for the purposes of determining whether the measure is consistent with this Agreement.

**Article X.03: Administrative Proceedings**

In order to administer a measure of general application affecting matters covered by this Agreement, in a consistent, impartial and reasonable manner, each Party shall ensure that in its administrative proceedings applying measures referred to in Article X.01 (Publication) to particular persons, goods or services of the other Party in specific cases:

- (a) whenever possible, a person of the other Party who is directly affected by a proceeding is given reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of the issues in controversy;
- (b) a person referred to in subparagraph (a) is afforded a reasonable opportunity to present facts and arguments in support of its position prior to any final administrative action, when permitted by time, the nature of the proceeding, and the public interest; and,
- (c) its procedures are in accordance with its domestic law.

**Article X.04: Review and Appeal**

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Each Party shall ensure that its tribunals are impartial and independent of the office or authority entrusted with administrative enforcement and that they do not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in its tribunals or procedures, the parties to the proceeding are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and

- (b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities with respect to the administrative action at issue.

#### **Article X.05: Cooperation on Promoting Increased Transparency**

The Parties agree to cooperate in bilateral, regional and multilateral fora on ways to promote transparency in respect of international trade and investment.

#### **Article X-6: Definitions**

For purposes of this Section:

**administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

#### **Section B- Anti-Corruption**

[Language on Anti-Corruption will be provided by Canada at a later date.]

[EC comment: still subject to internal discussion]

# **CHAPTER 14** **DISPUTE SETTLEMENT**

## **SECTION 1**

### **GENERAL PROVISIONS**

#### **ARTICLE 14.1: COOPERATION**

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

#### **ARTICLE 14.2: SCOPE**

[Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that

1. an actual [or proposed: EC is to consider] measure of the other Party is [or would be] inconsistent with the obligations of this Agreement; [EC: prefers to limit to actual measures EC may consider consultations only on proposed measures. Canada to propose drafting to this effect.]
2. the other Party has otherwise failed to carry out an obligation under this Agreement.]

[EC proposal: This Chapter applies to any dispute concerning the interpretation and application of the provisions of this Agreement unless otherwise [EC: expressly] provided].

[Canada is to reflect on non-violation complaints at consultation stage only. EC is to reflect on including this type of complaint beyond consultations.]

#### **ARTICLE 14.3: CHOICE OF FORUM**

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action.

[Canada:

2. In any dispute referred to in paragraph 1, if the responding Party claims that the dispute is subject to Article [X – Multilateral Environmental Agreements] and requests in writing that the dispute be considered under this Agreement, the requesting Party, in respect of that matter, may have recourse to dispute settlement procedures only under this Agreement.]
- 2 [bis]. Notwithstanding paragraph 1, if a Party has, with regard to a particular measure, instituted a dispute settlement proceeding, either under this Chapter or

under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. In addition, a Party shall not seek redress for the breach of an obligation which is equivalent in substance under the [CETA] and under the WTO Agreement in the two forums. In such case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress for the breach of the substantially equivalent obligation under the other agreement to the other forum, unless the forum selected fails, for procedural or jurisdictional reasons other than termination under paragraph XX (b) of Annex I, to make findings on that claim.

3. For the purposes of paragraph 2 [bis]:

- (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement (hereinafter referred to as the "DSU") and are deemed to be concluded when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17.14 of the DSU; and
- (b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 14.4.1 and are deemed to be concluded when the arbitration panel issues its ruling to the Parties and to the Trade Committee under Article 14.7.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the DSB. A Party may not invoke the WTO Agreement to preclude the other Party from suspending obligations under this Chapter.

## SECTION 2 CONSULTATIONS AND MEDIATION

### ARTICLE 14.4: CONSULTATIONS

1. A Party may request in writing consultations with the other Party regarding any matter referred to in Article 14.2.
2. The requesting Party shall transmit the request to the responding Party, and shall set out the reasons for the request, including the identification of the specific measure or other matter at issue under Article 14.2 and an indication of the legal basis for the complaint.
3. Subject to paragraph 4, the disputing Parties shall enter into consultations within 30 days of the date of receipt of the request by the responding Party. Consultations shall take place in the territory of the responding Party, unless the Parties agree otherwise.
4. In cases of urgency, including those involving perishable or seasonal goods or services that rapidly lose their trade value, consultations shall commence within 15 days of the date of receipt of the request by the responding Party.

5. The disputing Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations. To this end, each disputing Party shall:
  - a. provide sufficient information to enable a full examination of the matter at issue;
  - b. protect any confidential or proprietary information exchanged in the course of consultations as requested by the Party providing the information; and
  - c. make available the personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to the consultations.
6. Consultations are confidential and without prejudice to the rights of the disputing Parties in proceedings under this Chapter.
7. Consultations may be held in person or by any other means agreed to by the disputing Parties.

**[ARTICLE 14.4bis MEDIATION]**

The Parties may have recourse to mediation, as set out in Annex III. ]

**SECTION 3  
DISPUTE SETTLEMENT PROCEDURES**

**SUB-SECTION 1 – DISPUTE SETTLEMENT PROCEDURES**

**ARTICLE 14.5: INITIATION OF THE DISPUTE SETTLEMENT PROCEDURE**

1. Unless the disputing Parties agree otherwise, if a matter referred to in Article 14.3 has not been resolved within:
  - a. 45 days of the date of receipt of the request for consultations; or
  - b. 25 days of the date of receipt of the request for consultations for matters referred to in Article 14.4(4);the requesting Party may refer the matter to a dispute settlement panel by providing written notice to the responding Party.
2. In the notice referred to in sub-paragraph 1, the requesting Party shall identify the specific measure [or other matter at issue] and [CDN: provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.] [EC: it shall explain how such measure constitutes a breach of the provisions referred to in Article 2.]

**ARTICLE 14.6: COMPOSITION OF THE DISPUTE SETTLEMENT PANEL**

1. The panel shall comprise three individuals.



2. The Parties shall consult with a view to reaching an agreement on the composition of the arbitration panel within 10 working days of the date of receipt by the responding Party of the request for the establishment of an arbitration panel.
3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2, either Party may request the Chair of the [CETA institutional body], or the Chair's delegate, to draw by lot the members of the arbitration panel from the list established under [Article X]. One member shall be drawn from sub-list of individuals proposed by the complaining Party, one from the sub-list of individuals proposed by the responding Party and one from the sub-list of individuals proposed by the Parties to act as chairperson. If the Parties have agreed on one or more of the members of the arbitration panel, any remaining members shall be selected by the same procedure in the applicable sub-list of panellists. If the Parties have agreed on a member of the arbitration panel, other than the chairperson, who is not a national of either Party, the chairperson and other member shall be selected from the sub-list of proposed chairpersons.
4. The Chair of the [CETA institutional body], or the Chair's delegate, shall select the arbitrators as soon as possible and normally within five working days of the request referred to in paragraph 3 by either Party. The Chair, or the Chair's delegate, shall give a reasonable opportunity to representatives of each Party to be present when lots are drawn.
5. The date of establishment of the arbitration panel shall be the date on which the last of the three arbitrators is selected.
6. Should the list provided for in Article [X] not be established at the time a request is made pursuant to paragraph 3 the three arbitrators shall be drawn by lot from the individuals who have been proposed by one or both of the Parties in accordance with paragraph 1 of Article [X] [list of arbitrators].
7. Replacement of arbitrators shall take place only for the reasons and according to the procedures detailed in [rules 18 to 22] of the Rules of Procedure. ]

#### ARTICLE 14.6bis – Lists of arbitrators

1. The [CETA institutional body] shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals, chosen on the basis of objectivity, reliability and sound judgment, who are willing and able to serve as arbitrators. Each Party shall propose at least five individuals to serve as arbitrators. The Parties shall also select at least five individuals who are not nationals of either Party to act as chairpersons. The [CETA institutional body] may review the list at any time and shall ensure that the list conforms with this article/paragraph.

[2. The arbitrators must have specialised knowledge of international trade law. The individuals acting as chairpersons must also have experience as counsel or panelist in dispute settlement proceedings on subject matters within the scope of this Chapter. Arbitrators shall be independent, serve in their individual capacities and not take instructions from any

organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct annexed to this Chapter.

#### ARTICLE 14.7: INTERIM PANEL REPORT

1. The panel shall present to the disputing Parties an interim report within [150] days after the last panel member is appointed. The report shall contain:
  - a. findings of fact;
  - b. determinations as to whether the responding Party has conformed with its obligations under this Agreement [and any other finding or determination requested in the terms of reference]; and
  - c. [recommendations for resolution of the dispute, including determining the level of compensation equivalent to the value of trade loss suffered by the requesting Party.]
2. Each Party may submit written comments to the panel on the interim report, subject to any time limits set by the panel. After considering any such comments, the panel may:
  - a. reconsider its report; or
  - b. make any further examination that it considers appropriate.
3. Notwithstanding any other provision of this Chapter, the interim report of the panel shall be confidential.

#### ARTICLE 14.8: FINAL PANEL REPORT

1. Unless the disputing Parties agree otherwise, the panel shall issue a report in accordance with the provisions of this Chapter. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes. The ruling of the arbitration panel shall be binding on the Parties.
2. The panel shall present to the Parties a final report within 30 days of presentation of the interim report.
3. Each Party shall make publicly available the final report of the panel after it is presented to the disputing Parties, subject to [rule [36](confidentiality)].
4. In cases of urgency, including those involving perishable or seasonal goods or services that rapidly lose their trade value, the arbitration panel and the parties shall make every effort to accelerate the proceedings to the greatest extent possible. The Panel shall aim at presenting an interim report to the parties within [75] days after the last panel member is appointed, and a final report within [15] days of the presentation of the interim report. Upon request of a party, the arbitration panel shall make a preliminary ruling within 10 days of the request on whether it deems the case to be urgent.

5. The panel shall interpret the provisions referred to in Article 14.2 in accordance with customary rules of interpretation of public international law, including those set out in the *Vienna Convention on the Law of Treaties*. The panel shall also take into account relevant interpretations in reports of Panels and the Appellate Body adopted by the WTO DSB. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in the provisions referred to in Article 14.2.

## SUB-SECTION 2: COMPLIANCE

### ARTICLE 14.9: COMPLIANCE WITH THE PANEL RULING

1. [On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute. Unless otherwise agreed by the disputing Parties the resolution shall be in conformity with the determinations and any recommendations of the panel.
2. Wherever possible, the resolution shall be:
  - a. removal of a measure [or other matter] found by the panel to be inconsistent with an obligation in this Agreement; or
  - b. removal of the nullification or impairment.
3. If the disputing Parties are unable to agree on a resolution within 30 days of presentation of the final report, or such other period of time as the disputing Parties may agree, the responding Party shall, [if so requested by the requesting Party,] [pay compensation to the requesting Party in accordance with Article 14.10]. ]

### ARTICLE 14.10: TEMPORARY REMEDIES IN CASE OF NON-COMPLIANCE

[EC notes on Articles 14.9 and 14.10 that an alternative approach would be a reasonable period of time to comply, failing which the requesting Party may suspend concessions after a compliance panel review]

Further discussion during intersessional in May 2011 to take place on this subject.

### ARTICLE 14.11: REVIEW OF ANY MEASURE TAKEN TO COMPLY WITH THE PANEL RULING

1. [A disputing Party may] [The complaining Party shall], by written notice to the other Party, request that a panel be reconvened to make a determination with respect to any disagreement as to the existence or consistency with this Agreement, subject to Article 14.2, of a measure taken to comply with the determination or recommendations of the panel.
2. In the written notice of the request referred to in sub-paragraph 1, the Party shall identify the specific measure or matter at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. The panel shall be reconvened either:
  - a. upon receipt by the other Party of a written notice referred to in subparagraph 1; or
  - b. in the event that any original panel member is unable to serve on the panel, on the date on which a replacement member is appointed in accordance with the provisions of Article 14.5.
4. The provisions of Article 14.6, 14.7 and 14.11 apply to the procedures adopted and reports issued by the panel reconvened under this Article, with the exception that the panel shall:
  - a. present a final report within [90] days of being reconvened; and
  - b. present an interim report 15 days prior to presenting a final report.
5. A panel reconvened under this Article may include in its final report a recommendation, where appropriate, [that any compensation be terminated or that the amount of compensation be modified] [alternative approach is the termination of the sanctions where suspension of concessions is provided for].

#### EC PROPOSAL ON COMPLIANCE

##### ARTICLE 9

###### Compliance with the arbitration panel ruling

Each Party shall take any measure necessary to comply with the arbitration panel ruling, and the Parties shall endeavour to agree on the period of time to comply with the ruling.

##### ARTICLE 10

###### The reasonable period of time for compliance

1. No later than 30 days after the receipt of the notification of the arbitration panel ruling by the Parties, the responding Party shall notify the complaining Party and the [institutional body] of the time it will require for compliance (reasonable period of time), if immediate compliance is not possible.
2. In the event of disagreement between the Parties on the reasonable period of time with which to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the receipt of the notification made under paragraph 1 by the responding Party, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the [institutional body]. The arbitration panel shall notify its ruling to the Parties and to the [institutional body] within 30 days from the date of submission of the request.
3. The reasonable period of time may be extended by mutual agreement of the Parties.

##### ARTICLE 11

###### Review of any measure taken to comply with the arbitration panel ruling

1. The responding Party shall notify the other Party and the [institutional body] before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.
2. In the event of disagreement between the Parties concerning the existence of any measure notified under paragraph 1 or its consistency with the provisions referred to in Article 2, the complaining Party may request in writing the arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and shall explain how such measure is inconsistent with the provisions referred to in Article 2. The arbitration panel shall notify its ruling within 90 days of the date of submission of the request. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall notify its ruling within 45 days of the date of submission of the request.

## ARTICLE 12

### Temporary remedies in case of non-compliance

1. If the responding Party fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 11(1) is inconsistent with that Party's obligations under the provisions referred to in Article 2, the responding Party shall, if so requested by the complaining Party, present an offer for temporary compensation.
2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of notification of the arbitration panel ruling under Article 11 that the measure taken to comply is inconsistent with the provisions referred to in Article 2, the complaining Party shall be entitled, upon notification to the other Party and to the [institutional body], to suspend obligations arising from any provision referred to in Article 2 at a level equivalent to the nullification or impairment caused by the violation. The complaining Party may implement the suspension 10 working days after the date of receipt of the notification by the responding Party, unless the responding Party has requested arbitration under paragraph 3.
3. If the responding Party considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the arbitration panel to rule on the matter. Such request shall be notified to the other Party and to the [institutional body] before the expiry of the 10-working-day period referred to in paragraph 2. The arbitration panel, having sought, if appropriate, the opinion of experts, shall notify its ruling on the level of the suspension of obligations to the Parties and to the [institutional body] within 30 days of the date of submission of the request. Obligations shall not be suspended until the arbitration panel has delivered its ruling, and any suspension shall be consistent with the arbitration panel ruling.
4. The suspension of obligations shall be temporary and shall be applied only until any measure found to be inconsistent with the provisions referred to in Article 2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Article 13, or until the Parties have settled the dispute.

## ARTICLE 13

### Review of any measure taken to comply after the suspension of obligations

1. The responding Party shall notify the other Party and the [institutional body] of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of obligations applied by the complaining Party.
2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 2 within 30 days of the date of receipt of the notification, the complaining Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the [institutional body]. The arbitration panel ruling shall be notified to the Parties and to the [institutional body] within 45 days of the date of submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 2, the suspension of obligations shall be terminated.

#### ARTICLE 14.12: RULES OF PROCEDURE

Dispute settlement procedures under this Chapter shall be governed by the Rules of Procedure annexed to this Agreement, unless the Parties agree otherwise.

#### ARTICLE 14.15: PRIVATE RIGHTS

1. Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.
2. No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

[EC proposal:

#### Article 14.10 *bis*

This Chapter may be invoked in respect of measures affecting the observance of this Agreement taken at a level of government other than the central level. When [a panel] has ruled that any such measure is inconsistent with this Agreement [as set out in Article X], the responding Party shall take all necessary measures to ensure that the measure at issue is brought into compliance with the provisions of this Agreement. The provisions of this Chapter relating to compensation and suspension of concessions or other obligations [reference] apply in cases where it has not been possible to secure such compliance.]

#### ARTICLE 14.XX – MUTUALLY AGREED SOLUTIONS

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the [institutional body] and the arbitration panel of any such solution. Upon notification of the mutually agreed solution, the arbitration panel shall terminate its work and the procedure shall be terminated.

**RULES OF PROCEDURES AND CODE OF CONDUCT**

**ANNEX I**

**RULES OF PROCEDURE  
FOR ARBITRATION**

**GENERAL PROVISIONS**

1. In [Chapter X (Dispute Settlement)] and under these rules:

“adviser” means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;

“member” or “arbitrator” means a member of an arbitration panel established under Article 5 of [Chapter X (Dispute Settlement)];

“assistant” means a person who, under the terms of appointment of an arbitrator conducts research for or provides assistance to the member;

“complaining Party” means any Party that requests the establishment of an arbitration panel under Article 5 of [Chapter X (Dispute Settlement)];

“responding Party” means the Party that is alleged to be in violation of the provisions referred to in Article 2 of [Chapter X (Dispute Settlement)];

“arbitration panel” means a panel established under Article 6 of [Chapter X (Dispute Settlement)]; *[joint comment: we may revise terminology on panel and panelists at a later stage]*

“representative of a Party” means an employee or any person appointed by a government department or agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement;

“day” means a calendar day, unless otherwise specified;

“legal holiday” means every Saturday and Sunday and any other day designated by a Party as a holiday for the purposes of these rules.

2. The responding Party shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed. However, the Parties shall bear equally the administrative expenses of the dispute settlement proceedings as well as the remuneration and all travel, lodging and general expenses of the panellists and their assistants.

**NOTIFICATIONS**

3. Unless agreed otherwise, the Parties and the arbitration panel shall transmit any request, notice, written submission or other document by e-mail, with a copy submitted on the same day by facsimile transmission, registered post, courier, delivery against receipt or any other means of telecommunication that provides a record of its sending. Unless proven otherwise, an e-mail message shall be deemed to be received on the same date of its sending.

## LIMITE

4. When communicating in writing, a Party shall provide an electronic copy of its communications to the other Party and to each of the arbitrators.
5. Before the entry into force of this Agreement, each Party shall inform the other of its designated point of contact for all notifications.
6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by delivery of a new document clearly indicating the changes.
7. If the last day for delivery of a document falls on an official holiday or rest day in Canada or in the Union, the document may be delivered on the next business day. No documents, notifications or requests of any kind shall be deemed to be received on a legal holiday.
8. [Depending on the object of the provisions under dispute, all requests and notifications addressed to the [institutional body to be defined] in accordance with [Chapter X (Dispute Settlement)] shall also be copied to the other relevant [institutional bodies]] *[EU comment: depending on the institutional set up of the agreement and of the chapter].*

## COMMENCING THE ARBITRATION

9. Unless the Parties agree otherwise, they shall meet the arbitration panel within seven working days of its establishment in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and expenses to be paid to the arbitrators, which shall be in accordance with WTO standards. Remuneration for each arbitrator's assistant shall not exceed 50% of the total remuneration of that arbitrator. Members of the arbitration panel and representatives of the Parties may take part in this meeting via telephone or video conference. *[comment: Canada will try to get an official document with the rates from WTO secretariat]*
10. (a) Unless the Parties agree otherwise, within five working days of the date of the selection of the arbitrators, the terms of reference of the arbitration panel shall be:  
  
*"to examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions referred to in Article 2 of [Chapter X (Dispute Settlement)] and to make a ruling in accordance with Article 8 of [Chapter X (Dispute Settlement)]."*

*Comment Canada: "compatibility" may pose problems with NV N&I claims – EU: we prefer to have only violation claims – to be discussed under the article on scope.*

*Comment (October): Agreement to have terms of reference here – will examine precise language later.*

*[If a disputing Party requests the Panel to make findings regarding the degree of adverse trade effects of any measure found not to conform to the obligations of the Agreement, the terms of reference shall so indicate.]*



*[comment: relates to compliance proceedings – to be addressed in light of solution on that issue]*

(b) The Parties shall notify the agreed terms of reference to the arbitration panel within three working days of their agreement.

(c) The panel may rule on its own jurisdiction.

#### INITIAL SUBMISSIONS

11. The complaining Party shall deliver its initial written submission no later than 10 days after the date of establishment of the arbitration panel. The responding Party shall deliver its written counter-submission no later than 21 days after the date of delivery of the initial written submission.

#### WORKING OF ARBITRATION PANELS

12. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.
13. Hearings shall take place in person. Unless otherwise provided in [Chapter X (Dispute Settlement)] and without prejudice to paragraph 27, the arbitration panel may conduct its other activities by any means, including telephone, facsimile transmissions or computer links.
14. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.
15. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and must not be delegated.
- XX. Findings, determinations and recommendations of the panel under Articles 14.7 and 14.8 should be made by consensus, but if consensus is not possible then by a majority of its members.
- XX. Panel members may not furnish separate opinions on matters not unanimously agreed.
16. Where a procedural question arises that is not covered by the provisions of [Chapter X (Dispute Settlement)] and its annexes, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions and that ensures equal treatment between the Parties.
17. When the arbitration panel considers that there is a need to modify any time-limit applicable in the proceedings or to make any other procedural or administrative adjustment as may be required for the fairness or efficiency of the proceedings, it shall inform the Parties in writing of the reasons for the modification or adjustment and of the period or adjustment needed. The arbitration panel may adopt such modification or adjustment after having consulted the Parties.

## LIMITE

XX. Any time-limit referred to in this chapter may be modified by mutual agreement of the Parties. Upon request of a Party, the arbitration panel may modify the time-limits applicable in the proceedings.

XX.

The panel shall suspend its work:

- a) at the request of the complaining Party for a period specified in the request but not to exceed 12 consecutive months, and shall resume its work at the request of the complaining Party;
- b) after it has issued its interim report, only upon the request of both Parties, for a period specified in the request, and shall resume its work at the request of either Party.

If there is no request for the resumption of the panel's work by the end of the period specified in the request for suspension, the procedure shall be terminated. The termination of the panel's work is without prejudice to the rights of either Party in another proceeding on the same matter under this Chapter.

[Who may suspend and request resumption of panel to be reassessed upon completion of the compliance and post-retaliation procedures.]

## REPLACEMENT

18. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 6 paragraph 3 of [Chapter X (Dispute Settlement)].
19. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason must be replaced, that Party shall notify the other Party within 15 days from the time at which it came to know of the circumstances underlying the arbitrator's material violation of the Code of Conduct.
20. Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in Article 6 paragraph 3 of [Chapter X (Dispute Settlement)].

If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If, pursuant to such a request, the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, she or he shall draw a new arbitrator by lot from the names on the list referred to in Article X(1) of [Chapter X (Dispute Settlement)] and on which the original arbitrator was included. If the original arbitrator was chosen by the Parties pursuant to Article 6 of [Chapter X (Dispute Settlement)], the replacement shall be drawn by lot from the individuals proposed by the complaining Party and by the responding Party under Article X(1) of this Protocol. The selection of the new arbitrator shall be made within five working days

## LIMITE

of the date of the submission of the request to the chairperson of the arbitration panel.

21. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, shall dismiss the chairperson and select a replacement following the procedure set out in Article 6 paragraph 3 of [Chapter X (Dispute Settlement)].

If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to the two remaining members of the arbitration panel. The decision by these persons on the need to replace the chairperson shall be final.

If these persons decide that the original chairperson does not comply with the requirements of the Code of Conduct, they shall draw a new chairperson by lot among the remaining names on the list referred to in Article 19(1) of this Protocol to act as chairperson. The selection of the new chairperson shall be made within five working days of the date of the submission of the request referred to in this paragraph.

If these persons cannot reach a decision within 10 days of the matter being referred to them, the procedures set out in Article 6 of Chapter XX (Dispute Settlement) shall apply. *[drafting can be improved]*

22. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in rules 18, 19, 20 and 21.

## HEARINGS

23. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel, and confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings, subject to rule 36 (confidentiality).
24. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Canada and in Ottawa if the complaining Party is the Union.
25. As a general rule there should be only one hearing. The panel may on its own initiative or on the request of a Party convene one additional hearing when the dispute involves issues of exceptional complexity. No additional hearing shall be convened for the procedures established under *[...compliance proceedings]*.
26. All arbitrators shall be present during the entirety of the hearing.
27. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:
  - (a) representatives of the Parties;
  - (b) advisers to the Parties;
  - (c) administrative staff, interpreters, translators and court reporters; and

(d) arbitrators' assistants.

Only the representatives of and advisers to the Parties may address the arbitration panel.

28. No later than five working days before the date of a hearing, each Party shall deliver to the arbitration panel and to the other Party a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

29. *[renumber]*

30. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the responding Party are afforded equal time:

*Argument*

(a) argument of the complaining Party

(b) argument of the responding Party

*Rebuttal Argument*

(a) argument of the complaining Party

(b) counter-reply of the responding Party

31. The arbitration panel may direct questions to either Party at any time during the hearing.
32. The arbitration panel, after having received the comments of the Parties, shall issue to the parties a final transcript of each hearing.
33. Each Party may deliver to the arbitrators and to the other Party a supplementary written submission concerning any matter that arose during the hearing within 10 working days of the date of the hearing.

QUESTIONS IN WRITING

34. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.
35. Each Party shall also provide the other Party with a copy of its written response to the questions of the arbitration panel. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five working days of the date of receipt.

TRANSPARENCY AND CONFIDENTIALITY

- Xx Subject to paragraph [36], each party shall make its submissions publicly available and, unless the Parties decide otherwise, the hearings of the arbitration panel shall be open to the public.

36. The arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential business information. The Parties shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session. Each Party and its advisers shall treat as confidential any information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party's submission to the arbitration panel contains confidential information, that Party shall also provide, within 15 days, a non-confidential version of the submission that could be disclosed to the public.

#### EX PARTE CONTACTS

37. The arbitration panel shall not meet or contact a Party in the absence of the other Party.
38. No member of the arbitration panel may discuss any aspect of the subject matter of the proceedings with a Party or the Parties in the absence of the other arbitrators.

#### INFORMATION AND TECHNICAL ADVICE

- XX. On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, subject to any terms and conditions agreed by the Parties. Any information obtained in this manner must be disclosed to each Party and submitted for their comments.

#### AMICUS CURIAE SUBMISSIONS

- XX. Non-governmental persons established in a Party may submit amicus curiae briefs to the arbitration panel in accordance with the following paragraphs.
39. Unless the Parties agree otherwise within five days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions, provided that they are made within 10 days of the date of the [establishment] of the arbitration panel, and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the issue under consideration by the arbitration panel.
40. The submission shall contain a description of the person making the submission, whether natural or legal, including the nature of that person's activities and the source of that person's financing, and specify the nature of the interest that that person has in the arbitration proceeding. It shall be drafted in the languages chosen by the Parties in accordance with Rules 43 and 44 of these Rules of Procedure.
41. The arbitration panel shall list in its ruling all the submissions it has received that conform to the above rules. The arbitration panel shall not be obliged to address in its

ruling the arguments made in such submissions. The arbitration panel shall submit to the Parties for their comments any submission it obtains under this rule.

#### URGENT CASES

42. In cases of urgency referred to in [Chapter X (Dispute Settlement)], the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these rules as appropriate and shall notify the Parties of such adjustments.

#### TRANSLATION AND INTERPRETATION

43. During the consultations referred to in Article 6.2 of [Chapter X (Dispute Settlement)], and no later than the meeting referred to in Rule 9(b) of these Rules of Procedure, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.
44. If the Parties are unable to agree on a common working language, each Party shall arrange for and bear the costs of the translation of its written submissions into the language chosen by the other Party. The responding Party shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.
45. Arbitration panel rulings shall be issued in the language or languages chosen by the Parties.
46. Any costs incurred for translation of an arbitration ruling into the language or languages chose by the Parties shall be borne equally by the Parties.
47. A Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these rules.

#### CALCULATION OF TIME-LIMITS

48. All time-limits laid down in this chapter including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified.
- XX. Where, by reason of the application of rule 7 of these Rules of Procedure, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

#### OTHER PROCEDURES

49. These Rules of Procedure are also applicable to procedures established under [ *compliance proceedings* ]. However, the time-limits laid down in these Rules of Procedure shall be adjusted in line with the special time-limits provided for the adoption of a ruling by the arbitration panel in those other procedures.
50. In the event of the original panel, or some of its members, being unable to reconvene for the procedures established under [ *compliance proceedings* ], the procedures set out in Article 6 of [Chapter X (Dispute Settlement)] shall apply. The time limit for the notification of the ruling shall be extended by 15 days.

**ANNEX II**

**CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND  
MEDIATORS  
DEFINITIONS**

**1. In this Code of Conduct:**

(a) "member" or "arbitrator" means a member of an arbitration panel effectively established under Article 6 of [Chapter X (Dispute Settlement)];

[(b) "mediator" means a person who conducts a mediation in accordance with Article 4 of [Chapter X (Dispute Settlement)];]

(c) "candidate" means an individual whose name is on the list of arbitrators referred to in Article 19 of [Chapter X (Dispute Settlement)] and who is under consideration for selection as a member of an arbitration panel under Article 6 of [Chapter X (Dispute Settlement)];

(d) "assistant" means a person who, under the terms of appointment of a member, conducts, researches or provides assistance to the member;

(e) "proceeding", unless otherwise specified, means an arbitration panel proceeding under [Chapter X (Dispute Settlement)];

(f) "staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

**RESPONSIBILITIES TO THE PROCESS**

2. Every candidate and member shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former members must comply with the obligations established in paragraphs 15, 16, 17 and 18 of this Code of Conduct.

**DISCLOSURE OBLIGATIONS**

*[Introductory Note:*

*The governing principle of this Code of Conduct is that a candidate or member must disclose the existence of any interest, relationship or matter that is likely to affect the candidate's or member's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias. An appearance of impropriety or an apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that a candidate's or member's ability to carry out the duties with integrity, impartiality and competence is impaired.*

*These disclosure obligations, however, should not be interpreted so that the burden of detailed disclosure makes it impractical for persons in the legal or business community to serve as members, thereby depriving the Parties and participants of the services of those who might be best qualified to serve as members.*

*Throughout the proceeding, candidates and members have a continuing obligation to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process.]*

*[joint comments: both sides to think about this again]*

3. Prior to confirmation of her or his selection as a member of the arbitration panel under [Chapter X (Dispute Settlement)], a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.
4. Without limiting the generality of the foregoing, candidates shall disclose the following interests, relationships and matters:
  - (1) any financial interest of the candidate:
    - (a) in the proceeding or in its outcome, and
    - (b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
  - (2) any financial interest of the candidate's employer, partner, business associate or family member
    - (a) in the proceeding or in its outcome, and
    - (b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
  - (3) any past or existing financial, business, professional, family or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate or family member; and
  - (4) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods.



4. A candidate or member shall communicate matters concerning actual or potential violations of this Code of Conduct only to the [institutional body to be defined] for consideration by the Parties.
5. Once selected, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires a member to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The member shall disclose such interests, relationships or matters by informing the [institutional body to be defined], in writing, for consideration by the Parties.

**DUTIES OF MEMBERS**

6. Upon selection a member shall be available to perform and shall perform her or his duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.
7. A member shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.
8. A member shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with, paragraphs 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.
9. A member shall not engage in ex parte contacts concerning the proceeding.

**INDEPENDENCE AND IMPARTIALITY OF MEMBERS**

10. A member must be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.
11. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of her or his duties.
12. A member may not use her or his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence her or him.
13. A member may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.
14. A member must avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

OBLIGATIONS OF FORMER MEMBERS

15. All former members must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the arbitration panel.

CONFIDENTIALITY

16. No member or former member shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
17. A member shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with [Chapter X (Dispute Settlement)].
18. A member or former member shall not at any time disclose the deliberations of an arbitration panel, or any member's view.

EXPENSES

19. Each member shall keep a record and render a final account of the time devoted to the procedure and of her or his expenses as well as the time and expenses of his or her assistant.

[MEDIATORS]

20. [The disciplines described in this Code of Conduct as applying to members or former members shall apply, *mutatis mutandis*, to mediators.]

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Draft Proposal for Mediation Procedure in EU-Canada CETA

ANNEX III

ARTICLE 1: OBJECTIVE AND SCOPE

1. The objective of this Annex is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.
2. This Annex shall apply to any measure under the scope of this Agreement [*exact scope and possible carve-outs to be discussed at later stage in light of content of CETA*] adversely affecting trade or investment between the Parties.

SECTION A  
MEDIATION PROCEDURE

ARTICLE 2: INITIATION OF THE PROCEDURE

1. A Party may request, at any time, that the Parties enter into a mediation procedure. Such request shall be addressed to the other Party in writing. The request shall be sufficiently detailed to present clearly the concerns of the requesting Party and shall:
  - (a) identify the specific measure at issue;
  - (b) provide a statement of the alleged adverse effects that the requesting Party believes the measure has, or will have, on trade or investment between the Parties; and
  - (c) explain how the requesting Party considers that those effects are linked to the measure.
2. The mediation procedure may only be initiated by mutual agreement of the Parties. When a Party requests mediation pursuant to paragraph 1, the other Party shall give good faith consideration to the request and reply in writing within 10 days of receiving it.

ARTICLE 3: SELECTION OF THE MEDIATOR

1. Upon launch of the mediation procedure, the Parties shall agree on a mediator, if possible, no later than 15 days after the receipt of the reply to the request.
2. A mediator shall not be a citizen of either party, unless the parties agree otherwise.

3. The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution. The [code of conduct of the dispute settlement chapter] shall apply to mediators. Rules 3 through 8 (notifications) and 43 through 48 (translation and calculation of time limits) of the [Rules of Procedure of the Dispute Settlement Chapter] shall also apply, *mutatis mutandis*.

#### ARTICLE 4: RULES OF THE MEDIATION PROCEDURE

1. Within 10 days after the appointment of the mediator, the Party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party, in particular of the operation of the measure at issue and its trade effects. Within 20 days after the date of delivery of this submission, the other Party may provide, in writing, its comments to the description of the problem. Either Party may include in its description or comments any information that it deems relevant.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned and its possible trade-related impact. In particular, the mediator may organize meetings between the Parties, consult the Parties jointly or individually, seek the assistance of or consult with relevant experts<sup>89</sup> and stakeholders and provide any additional support requested by the parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the Parties.

3. The mediator may offer advice and propose a solution for the consideration of the Parties which may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.

4. The procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.

5. The parties shall endeavour to reach a mutually agreed solution within 60 days from the appointment of the mediator. Pending a final agreement, the parties may consider possible interim solutions, especially if the measure relates to perishable goods.

6. The solution may be adopted by means of a decision of the [FTA joint body]. Either Party may make such solution subject to the completion of any necessary internal procedures. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a Party has designated as confidential.

## **LIMITE**

7. On request of the Parties, the mediator shall issue to the parties, in writing, a draft factual report, providing a brief summary of (1) the measure at issue in these procedures; (2) the procedures followed; and (3) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions. The mediator shall provide the parties 15 days to comment on the draft report. After considering the comments of the parties submitted within the period, the mediator shall submit, in writing, a final factual report to the parties within 15 days. The factual report shall not include any interpretation of this Agreement.

8. The procedure shall be terminated:

- (a) by the adoption of a mutually agreed solution by the Parties, on the date of adoption.
- (b) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail;
- (c) by a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator. Such declaration may not be issued before the period set out in Article 4.5 has expired; or
- (d) at any stage of the procedure by mutual agreement of the Parties.

### **SECTION B IMPLEMENTATION**

#### **ARTICLE 5: IMPLEMENTATION OF A MUTUALLY AGREED SOLUTION**

- 1. Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
- 2. The implementing Party shall inform the other Party in writing of any steps or measures taken to implement the mutually agreed solution.

### **SECTION C GENERAL PROVISIONS**

#### **ARTICLE 6: CONFIDENTIALITY AND RELATIONSHIP TO DISPUTE SETTLEMENT**

- 1. Unless the Parties agree otherwise, and without prejudice to Article 4(6), all steps of the procedure, including any advice or proposed solution, are confidential. However, any Party may disclose to the public that mediation is taking place. The obligation of

confidentiality does not extend to factual information already existing in the public domain.

2. The mediation procedure is without prejudice to the Parties' rights and obligations under the provisions on Dispute Settlement in this Agreement or any other agreement.

3. Consultations under the Dispute Settlement Chapter are not required before initiating the mediation procedure. However, a Party should normally avail itself of the other relevant cooperation or consultation provisions in this Agreement before initiating the mediation procedure.

4. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this Agreement or any other agreement, nor shall a panel take into consideration:

- (a) positions taken by the other Party in the course of the mediation procedure or information gathered under Article 4.2;
- (b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or
- (c) advice given or proposals made by the mediator.

5. A mediator may not serve as a panellist in a dispute settlement proceeding under this Agreement or under the WTO Agreement involving the same matter for which he or she has been a mediator.

#### **ARTICLE 7: TIME LIMITS**

Any time limit referred to in this Annex may be modified by mutual agreement between the Parties.

#### **ARTICLE 8: COSTS**

1. Each Party shall bear its costs of participation in the mediation procedure.

2. The Parties shall share jointly and equally the costs of organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be in accordance with that of the Chairperson of an arbitration Panel in [Rule 9 of the Rules of Procedure]

#### **ARTICLE 9: REVIEW**

## **LIMITE**

Five years after the date of entry into force of this Agreement, the Parties shall consult each other on the need to modify the mediation mechanism in light of the experience gained and the development of any corresponding mechanism in the WTO.

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